Handling a VA Service Connected Disability Claim

Cosponsored by the Military and Veterans Law Section

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Oregon State Bar Center
Tigard, Oregon

5.5 General CLE or Access to Justice credits and 1 Ethics credit
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OREGON STATE BAR
16037 SW Upper Boones Ferry Road
P.O. Box 231935
Tigard, OR 97281-1935
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SCHEDULE

Presented by:
♦ Matthew D. Hill, Hill & Ponton PA, Daytona Beach, Florida
♦ Sara Kathryn Hill, Hill & Ponton PA, Daytona Beach, Florida
♦ Richard “Gregg” Maxon, Maxon Cutts PLLC, Tempe, Arizona

8:00  Registration

9:00  Overview
♦ Structure of the Department of Veterans Affairs
♦ Benefits
♦ Types of claims
♦ Getting accredited and paid
♦ Veterans’ courts

10:00  A Walk Through a VA Disability Claim
♦ Filing a claim
♦ Forms
♦ Appeals time frames
♦ When to submit evidence

11:00  Break

11:15  Ethics
♦ Applicable ethics rules
♦ Complaint statistics
♦ Types of grievances
(The ABA Model Rules will be referenced.)

12:15  Lunch

1:15  Establishing Service-Connected Compensation
♦ The five elements of a VA claim
♦ Direct service connection
♦ Presumptive claims
♦ Post-traumatic stress disorder and direct service connection
♦ Examples of VA errors

2:15  Claims for Increase, Secondary Claims, and Dependents’ Claims
♦ Evidence and procedure for claiming an increase
♦ Claims secondary to already established service compensation
♦ Benefits available to survivors of veterans

3:15  Break

3:30  Ratings and Effective Dates
♦ Rating codes for individual disabilities
♦ Combining ratings
♦ Rules for establishing the effect date of a claim

4:30  Adjourn
FACULTY

Matthew D. Hill, Hill & Ponton PA, Daytona Beach, Florida. Mr. Hill focuses exclusively on representing veterans and their dependents in claims for compensation through the Department of Veterans’ Affairs. His practice ranges from submitting original claims for compensation for disability benefits at VA regional offices to filing appeals at the Court of Appeals for Veterans’ Claims. Mr. Hill serves on the National Organization of Veterans’ Advocates (NOVA) Board of Directors and as chair of the seminar committee. He also created the NOVA outreach committee, which specifically seeks partnerships with other organizations to train advocates to represent veterans. He is admitted to practice in Florida and the District of Columbia and before the United States Court of Appeals for Veterans Claims.

Sara Kathryn Hill, Hill & Ponton PA, Daytona Beach, Florida. Ms. Hill’s areas of practice are veterans law and Social Security disability law. She is a member of the Orange County (Florida) Bar Association, the Volusia County Bar Association, the American Bar Association, the National Organization of Social Security Claimant Representatives, and the National Organization of Veterans’ Advocates.

Richard “Gregg” Maxon, Maxon Cutts PLLC, Tempe, Arizona. Prior to the creation of Maxon Cutts PLLC, Mr. Maxon was a sole practitioner practicing in the area of veterans and military law. Mr. Maxon retired after nearly 35 years of military service in the Army, Navy, and Army National Guard. He served as a Judge Advocate for over 16 years, with his final assignment as the Assistant Adjutant General for the Arizona Army National Guard. Mr. Maxon also served as the Director of the Arizona Department of Veterans Services from March 2007 to July 2008.
Overview of the VA

- The Department of Veterans Affairs (“VA”) is a cabinet level federal agency.
- The current secretary to the VA is Eric Shinseki.
  - Secretary Shinseki is a retired General and a former Army Chief of Staff.
Overview of the VA

• The VA has two major functions, which fall under two separate wings of the agency:
  • Provide health care.
    • Veterans Health Administration (“VHA”)
  • Provide benefits and other compensation to veterans and their dependents.
    • Veterans Benefits Administration (“VBA”)
• Sometimes the VHA and the VBA are on the same page, sometimes not.

Statistics

• Some Statistics:
  • 22.7 million veterans (8% are women).
  • 3.1 million veterans receive VA compensation.
  • 285,000 veterans are rated at 100% disabled
  • 57 VA Regional Offices (“VAROs”) nationwide.
  • Approximately $64 billion allocated in 2012 for VA benefits.
Who Is a Veteran?

- The VA has its own statutory definition of a veteran.
- A veteran is “a person who served in the active military, naval or air services, and who was discharged or released under conditions other than dishonorable.” 38 U.S.C. § 101(2).
  - The VA may determine that a person is not a “veteran” and deny a claim for benefits.

Benefits Overview

- Main Types of VA Benefits:
  - Disability Compensation Benefits.
  - Pension Benefits.
  - Vocational and Educational Benefits.
  - DIC Benefits.
  - Section 1151 Benefits.
Benefits Overview

• The benefits process is intended to be non-adversarial and veteran-friendly.

• IT’S NOT.
  • Denials at the VARO level, particularly on the first review, are frequent.
    – Whose checkbook is it anyway?
  • The VA loses on appeal at least 60% of the time, yet still continues to deny valid claims with little sense of shame or accountability.

Benefits Overview

• The claims process is not quick either.
• Claims can take years to run their course.
• Think geologic time.
• The VA has imposed lots of deadlines on veterans, but none on themselves.
Disability Compensation Claims

- To receive VA disability benefits on the basis of direct service connection, a veteran must meet three criteria:
  - A documented event in service . . .
  - Having a medical nexus or link . . .
  - To a current professionally diagnosed disability.

Disability Compensation Claims

- The burden of proof is “as likely as not” that the veteran’s disability is due to military service.
- This standard is slightly lesser than preponderance of the evidence.
- If the evidence is 50-50, the veteran is supposed to win.
Disability Compensation Claims

• The VA designates certain conditions as “presumptively” service connected.
  • Example: Type II Diabetes and Ischemic Heart Disease are presumptively service connected for veterans who were physically present in Vietnam during the time period when Agent Orange was used.
  • There is no such claim as “Agent Orange Exposure.” A veteran has to show that he has a medical condition due to the exposure.

DIC

• The VA pays monthly Dependency and Indemnity Compensation (“DIC”) to the surviving spouse or dependent children of a veteran where:
  • The primary or contributing cause of the veterans’ death was a service-connected condition or one that met the three criteria for service-connected compensation; or
  • The veteran had a 100% service-connected disability for 10 years prior to his death.
Accrued Benefits

• If a veteran has a claim pending at the time of his death, the claim dies with the veteran.
• A surviving spouse or dependent child may receive accrued benefits that were not finally adjudicated at the time of the veteran’s death.
• A family member may request to substitute for the deceased veteran to complete a pending claim.

Pension

• Needs-based program designed to supplement income of veterans who cannot support themselves due to disability.
• To qualify for VA pension benefits, a veteran must have wartime service, low income, and a total permanent disability (need not be service-connected).
• Veterans aged 65 or older also may qualify for VA pension benefits.
Secondary Service Connection

- Where a veteran has a service-connected condition and later develops another condition as a result of the service-connected condition, the second condition will also qualify as a service-connected condition.
  - There must be a medical opinion showing that the second condition was caused or aggravated by the direct service-connected condition.

Secondary Service Connection

- Example: A veteran’s inability to participate in certain life activities due to a service-connected back condition leads to depression.
- Example: A veteran begins to suffer from other medical conditions stemming from presumptively service-connected Type II Diabetes.
Claims for Increased Rating

• If a veteran believes that his service-connected condition has become more disabling, he should submit a claim for an increased rating.

• Requirements to file an increased rating claim:
  • A current service-connected condition; and
  • A good faith belief that the condition has become more severe and more disabling.

TDIU

• A veteran whose service-connected disabilities prevent him from obtaining or maintaining substantially gainful employment will receive compensation at the 100% disability rating level.
  • Typically, a veteran must have (1) one service-connected disability rated at 60% or (2) a combined disability rating of 70% with at least one disability rated at 40% or higher.
Reopening Claims

• If a veteran was previously denied service connection for a claimed condition and the period to appeal that denial has expired, then the veteran may re-open the claim with “new and material evidence.”

• If a veteran does not timely appeal a denial, however, he will lose the earlier claim’s effective date.

CUE

• Claims to revise a previous final VARO or Board of Veterans Appeals (“BVA”) decision are referred to as claims based on clear and unmistakable error (“CUE”) on the part of the agency.

• CUE: (1) facts known by the VA at the time of the decision were not before the adjudicator; or (2) the VA incorrectly applied the law.
Claims Process

• Step One: File a claim with the VARO.
  • Forms can be filled out on the VA website.
  • Veterans cannot hire attorneys to represent them in filing the initial claim.
  • Veterans can use VSOs – trained volunteers who work with Disabled American Veterans, American Legion, etc.

Claims Process

• Step One, cont.:
  • Before issuing a Rating Decision, the VA may:
    • Send the veteran for a Compensation and Pension ("C&P") examination.
    • Ask for additional information to decide a particular claim.
    • Defer some claims until additional information is received and decide the remaining claims.
Claims Process

- The VA has a “duty to assist” veterans in developing claims.
- Upon receiving a claim, the VA should obtain in-service medical records, VA medical records, and any other relevant government documents that the veteran authorizes the VA to obtain.

Claims Process

- Step Two: File a Notice of Disagreement within one year after the Rating Decision is issued.
  - If the claim is denied in whole or in part, or if a disability is underrated, then the veteran has one year from the date of the Rating Decision to file a Notice of Disagreement.
Claims Process

• Step Two, cont.:
  • The Notice of Disagreement should be accompanied by a Statement in Support of Notice of Disagreement.
    • Memorandum with supporting evidence and exhibits
  • Veterans can hire attorneys to represent them once a Notice of Disagreement has been filed.

Claims Process

• Step Three: Choose Decision Review Officer (“DRO”) or BVA Review
  • DRO review gives you two bites at the apple.
  • If the VARO DRO denies the veteran’s appeal, the veteran can still appeal to the BVA.
  • DRO review can be formal or informal.
  • Choosing the intermediate step of DRO review can take longer (2 steps versus 1 step) so a veteran may want to go straight to the BVA.
Claims Process

- Step Four: Timely respond to the statement of the case ("SOC").
  - After receiving the NOD, the VA will send a SOC.
  - The veteran has 60 days from the date of the SOC to file a VA Form 9 indicating that he wishes to appeal to the BVA.
  - **No VA Form 9, game over.**

Claims Process

- Step Five: Board of Veterans Appeals
  - File a brief to the BVA.
    - No specific format.
    - Be organized, logical, clear, concise, and thorough.
  - Wait. And wait some more.
  - Your case may be heard by a traveling board.
  - An ALJ will decide the case.
  - The claim may be granted, denied, or remanded in whole or in part.
Claims Process

• Step Six: Appeal to the Court of Appeals for Veterans Claims ("CAVC")
  • A veteran has 120 days from the date of the BVA decision to appeal to the CAVC.
  • The CAVC can affirm, reverse, vacate with remand or some combination thereof.
  • Remand = Win.
  • Sometimes the government will offer remand in lieu of briefing.

Claims Process

• If a veteran does not prevail at the CAVC, then he has further appeal rights to the Federal Circuit or to SCOTUS.
• An attorney is eligible for EAJA fees if the veteran is the prevailing party in court.
  • The attorney must provide an itemized statement of fees sought.
  • The government may challenge your EAJA application.
  • If your EAJA application is challenged, you need to respond.
Representing Veterans

• Get accredited by the VA by completing a VA Form 21A.
  • You will need to obtain a separate admission to practice before the CAVC.
• Obtain signed, written consent to obtain the veteran’s claim file.
• Send a copy of the signed consent form to the appropriate VARO with a cover letter requesting the claim file.

Representing Veterans

• Enter into a fee agreement with the veteran.
  • Typically a 20% contingent fee.
  • Cooperation and communication clauses.
  • Follow your local jurisdiction’s ethical rules.
• Send a copy of the fee agreement and a VA Form 21-22a to the VARO.
  • You must send within 30 days of execution to get fees withheld.
Contact Information

Gregg Maxon, Esq.
Maxon Cutts, PLLC
1050 E. Southern Ave., Suite G-3
Tempe, Arizona 85282
T (480) 838-6566
F (480) 838-8810
maxon@maxoncutts.com
# Chapter 2

## A VA Claim from Beginning to “End”

**Sara Kathryn Hill**  
Hill & Ponton PA  
Daytona Beach, Florida

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A VA Claim From Beginning to “End”

Sara K. Hill
Hill & Ponton, P.A.

I. Preliminaries

The Veteran’s Benefits Manual
- Get it at www.nvlsp.org
- Title 38 of USC & CFR
- Also available online @ veteransbenefits.lexisnexis.com

II. Regional Office

VA-accredited can practice at any RO.

A veteran’s RO is almost always nearest their home. (If Vet moves, file should move too.)

Exceptions:
- DIC claims/appeals: Pension Management Centers
- Sometimes farmed out to other less-busy ROs.
- Appeals Management Center (AMC) in DC
- Paperless initiatives
- STAR
- Tiger Team

A. Original Claim Form (21-526) (38 C.F.R. § 3.151)

- Must be filed to get benefits. (38 U.S.C. § 5101(a)).
- Only need to file once. All subsequent claims can be filed in shorter form.
- Substantially complete is OK at first. (When a claim form is not substantially complete, VA must notify the claimant of evidence necessary to complete application. Isenhart v. Derwinski, 3 Vet. App. 177 (1992)).
- Look at conditions listed to make sure VA addressed them all properly.

“There is no requirement . . . that a veteran must specify with precision the statutory provisions or the corresponding regulations under which he is seeking benefits . . . The [VA]’s obligation to [consider] . . . all benefits to which [a claimant] is entitled is in keeping with the essence of the VA system, which allows veterans to pursue their claims in a nonadversarial setting.” See Andrews v. Nicholson, 421 F.3d 1278 (Fed. Cir. 2005); Moody v. Principi, 360 F.3d 1306 (Fed. Cir. 2004); Szemraj v. Principi, 357 F.3d 1370 (Fed. Cir. 2004); Roberson v. Principi, 251 F.3d 1378 (Fed. Cir. 2001); Akles v. Derwinski, 1 Vet. App. 118, 121 (1991)).
B. Subsequent Claims

1. Types
   - New Disabilities (for service connection (S/C))
   - Increased Ratings (I/R) (Veteran entitled to exam if he claims S/C condition worsened.)
   - Secondary Conditions (A new condition caused by a S/C condition.)
   - Requests to Reopen (Must file new & material evidence to get old claim reopened.)
   - TDIU (I/R to 100% due to Unemployability) (21-8940)
   - Survivors’ Claims (Substitution, DIC/Accrued Benefits)
   - Changing Dependents (Anything Else (e.g., requests for revision due to CUE)

2. Methods
   - Supplemental Claim Form (21-526b)
   - Informal Claim (38 C.F.R. §§ 3.155, 3.157)

An informal claim is any written communication from the veteran that indicates an intent to apply for benefits. The only specific requirements are that it identify the benefits sought and be followed by a formal application. The VA is required to “fully and sympathetically develop a veteran’s claim to its optimum,” to include determining whether an informal claim has been filed. Moody v. Principi, 360 F.3d 1306, 1310 (Fed. Cir. 2004) (quoting Roberson v. Principi, 251 F.3d 1378, 1384 (Fed. Cir. 2001)).

Filing an informal claim basically preserves the earliest effective date while you secure evidence and information for formalizing the claim within a year.

   Letter
   Statement in Support of Claim (21-4138) (VA’s version of a blank sheet of paper)
   Specific forms (TDIU, DIC, etc.)
   TDIU (21-8940)
      VA will deny if no form is on file.
      Fastest, easiest way to 100%
      One disability @ 60% or combined rating of 70% with one at 40% & and
       (due to those disabilities) cannot maintain substantially gainful employment.
      Some disabilities can be combined to make “one disability” for the 60% or
       40%

   Survivors’ Claims
      a. Substitution (21-0847)

The qualified survivor steps into the shoes of the deceased veteran and can continue the claim/appeal. Currently adjudicated separately at the RO level even if case is at the Board when veteran dies.

   b. DIC/Accrued Benefits (21-534)

Claim for DIC is also a claim for accrued benefits that were due and payable at the veteran’s death. Also, a Social Security claim for survivor’s benefits is deemed to be concurrent claim for DIC. (38 C.F.R. § 3.153, 38 U.S.C. § 5105(b)). If filed within a year of death, effective date is date of death, otherwise, it will be set at the date VA received the claim.
C. Regional Office Procedure

VCAA/Development Letters
Rating Decision
Notice of Disagreement (NOD)
Attorney Representation/Client Intake
Claims File
NOD Acknowledgment/DRO vs. Traditional Option
C&P Exam Reports
Argument/Evidence to DRO
Statement of the Case (SOC)
Supplemental Statement of the Case (SSOC)

1. VCAA/Development Letters

   a. Notice (38 U.S.C. § 5103(a); 38 C.F.R. § 3.159(b))

Once the VA receives a complete or substantially complete application for benefits, the VA must notify the claimant of any information and evidence necessary to substantiate the claim. The VA must indicate which parts of any information and evidence the claimant should provide and which of it the VA will attempt to obtain. See 38 U.S.C. § 5103(a). The VA will also request that the claimant provide any evidence in their possession that pertains to the claim. If VA does not receive the necessary requested information and evidence within one year of the date of the notice, VA cannot pay benefits based on that application. If the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the one-year period based on the information and evidence in the file. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim. See 38 C.F.R. § 3.159(b).

VA is required to inform the claimant:
- what information or evidence is necessary to substantiate the claim;
- which portion of that information or evidence the claimant is to provide;
- which portion of that information or evidence the VA will attempt to obtain;
- that the claimant may submit any other evidence in their possession that may be relevant to the claim.
- about disability ratings, and
- about effective dates.

When a veteran claims that he did not receive notice of a decision or of his appellate rights, the "presumption of regularity" applies. It is presumed that the VA mailed out its standard paperwork in the appropriate way to the correct address. The veteran then has the burden to show that the VA failed to issue its correspondence properly. See Butler v. Principi, 244 F.3d 1337 (Fed. Cir. 2001); Woods v. Gober, 14 Vet. App. 214 (2000).

b. Duty to Assist (38 U.S.C. § 5103A; 38 C.F.R. § 3.159(c))

The VA is required to make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claim unless no reasonable possibility exists that such assistance would aid in substantiating the claim. The VA must make reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies authorizes the Secretary to obtain. If the Secretary is unable to get all of the relevant records sought, the claimant must be notified as to the identity of the records the Secretary was unable to obtain. The VA must briefly explain the efforts made to obtain those records and describe any further action to be taken. Whenever the Secretary attempts to obtain records from a federal department or agency, the efforts shall continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile.

The VA should assist in obtaining the following relevant records:
- Service medical records and any other records pertaining to the claimant’s active service that are held or maintained by a governmental entity,
- Medical treatment or examination reports at VA health-care facilities, and
- Any other items held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain.

Additionally, when a medical examination or opinion is necessary to make a decision on the claim, the VA must provide one. An examination or opinion is necessary when all information and lay or medical evidence:
- contains competent evidence of a current disability, or persistent or recurrent symptoms of disability; and
- indicates that the disability or symptoms may be associated with the claimant’s service; (or when the evidence indicates that an event, injury, or disease occurred in service or that certain diseases manifested during an applicable presumptive period), but
- does not contain sufficient medical evidence for the Secretary to make a decision on the claim.

Chapter 2—A VA Claim from Beginning to “End”

2. Rating Decision
   Grant or deny service connection
   Grant or deny increased rating(s) (TDIU is request for increased rating)
   Grant or deny survivor’s benefits
   Set effective date(s) (usually date VA rec’d claim)
   Assign rating percentage(s) (in increments of 10, starting with 0%)
   May defer some claims

   Identify the decision to VA by the date of the decision’s notice letter. (Date of decision itself is usually earlier than the date of letter.)

3. Notice of Disagreement (NOD) (the appeal)
   Must file within one year of decision’s notice letter.
   Triggers your right to get paid.
   Say veteran desires appellate review.
   Keep it short and simple: tell what you disagree with and why.
   Check any effective dates and rating percentages assigned cover all the bases.
   If you don’t have the claims file and need to file a broad (CYA) NOD, say you’ll clarify ASAP.

4. Attorney Representation/Client Intake
   a. Forms
      Accreditation Form (21a) (Must be accredited to practice before the agency.)
      Appointment of Individual as Claimant’s Representative (21-22a)
      Fee Agreement (E-mail it to: FeeAgreements.OGC@VA.gov and send hard copy via CMRR or fax to RO)
      Authorization to Disclose Personal Information to a Third Party (21-0845)
      Request for and Authorization to Release Medical Records or Health Information (10-5345)
      Declaration of Status of Dependents (21-686c) if necessary
      Case-specific forms (TDIU, Substitution, etc.)
      Others?

   b. Correspondence
      Notice of Representation
      Claims File Request
      Medical Records Request
      NPRC Request
      Etc.

   c. Sending your stuff to the RO
      - Address it to the appropriate department.
      - Use Reply Reference code from the latest correspondence, if applicable.
      - Make it obvious what the cover letter is presenting.
      - Enclose fee agreement, 21-22a, and any other forms.
      - Send it Certified Mail RRR &/or fax it.
      - Don’t give them a lot of words.

5. The Claims File
a. What to Expect
   - No logical order
   - Usually not a manageable size
   - Pages upside-down, backward, or both
   - Not all legible, especially old service medical records (SMRs)
   - May see other veterans' SSNs in it
   - Missing pages & lots of duplicates

b. Managing the C-file
   - Do what works for you.
   - Some say keep it in order received for important date stamps, etc.
   - Scan it in if possible.
   - Organize it: decisions, medical (service, VA, private), correspondence (to and from VA), claims, appeals, DD-214, etc.
   - Set aside or ignore irrelevant stuff.
   - Make a timeline.
   - Study the medical.
   - Be on the lookout for golden tickets, red herrings, and needles in the haystack.
   - Flag important pages to copy and highlight for them.

6. NOD Acknowledgment/DRO Option a.
   a. DRO or Traditional Review?
      - DROs are supervisors on the appeals team.
      - They review appealed denials and issue new decisions.
      - You can request a formal or informal hearing or sometimes a phone conference.
      - Another bite at the apple.
      - Give them something new to help them be willing to change the prior decision.
      - Traditional review skips the DRO and puts the file on track for the Board of Veterans' Appeals (BVA) to handle the appeal.
      - Choice can depend on the case, timing, or preference based on DRO history.
   b. DRO Request Acknowledgment
      - Should get a notice letter confirming your request

7. Compensation and Pension (C&P) Exams
   - Compensation & Pension department is not part of the Veterans' Health Administration, but part of the Benefits branch.
   - Sometimes exams are contracted out to providers such as QTC.

The veteran has a duty to appear at scheduled VA examinations. If he doesn't, and has no good excuse, the claim can be denied. 38 C.F.R. § 3.655(c); see Engelk2 v. Gober, 10 Vet. A pp. 396,

8. Argument/Evidence to DRO
   a. Argument
      - Know your audience.
      - Don't bother the RO with a lot of case or reg cites.
      - Help them put the ducks in a row.
      - Connect the dots.
Chapter 2—A VA Claim from Beginning to “End”

- Show & Tell.
- Organize it for them.
- Keep their attention.
- Use colorful tabs, **bold** type, *italics*, underlining, bullets, numbered lists, highlighting, etc.
- Attach/enclose copies of whatever they need to see.

b. Evidence
- Service Medical Records (read them carefully)
- VA Medical (interpret it for them)
- C&P Exam Reports (point out deficiencies)
- Private Medical (may be necessary to win)
- Lay Statements (from spouse, service buddies, friends, employers, etc.)
- Scientific/Archive Research (Google = your BFF)
- Pictures (but only to support the argument)
- Personnel Records (show exposures, etc.)
- Unit Histories (to prove stressors, etc.)

Whatever Works

9. Statement of the Case (SOC)
- Deadline to file formal appeal (Form 9) to BVA: Either **one year** from notice of Rating Decision OR **60 days** from date of SOC notice letter
- Be safe and file ASAP
- Full of boilerplate, cut/paste recitations of law that may or may not apply.
- Most important info is in the first few pages where they list the issues, evidence, and timeline and last few pages where they explain or repeat the prior denial.

10. Supplemental Statement of the Case (SSOC)
- Usually much shorter than SOCs
- Address new evidence &/or argument
- Or come out after remands
- 30-day optional response time
- Always respond if you can
III. Board of Veterans’ Appeals (BVA)

A. Form 9
   - File Form 9 (formal appeal) within 60 days of SOC (or within year of Rating Decision notice).
   - An NOD initiates an appeal; the Form 9 completes it.
   - File will still sit at the RO forever before being sent up to DC.

B. Hearing or Not?
   - Can humanize a Claim number.
   - Some stats say it improves chances of winning.
   - But a good brief alone, for a DRO or later for BVA, can get the job done very well.
   - Can take a long time to get one (either DRO or BVA).
   - Weigh the time cost against the potential benefit.
   - Can’t hurt to ask for a hearing & withdraw the request later.
   - Bottom line: It’s up to you.

C. Waiver of AOJ (Agency of Original Jurisdiction)/RO Review of New Evidence
   - When you have a Board hearing or submit additional evidence at the Board level, you should waive RO review of that evidence, unless you have a good reason not to.

D. 90-Day Letter
   - They can make a decision prior to the expiration of 90 days.
   - Be sure to ask for the full 90 days A SAP, unless you don’t need the time.
   - Don’t send anything to the Board until you know the file is in DC.

E. Docketing Notice

F. Brief to BVA
   - No specific format is required.
   - Keep it simple and to the point.
   - You can use a little more law at this level.
   - Draw them a picture.
   - Give them what they need to make it right.
   - Make the decision easy for them.

G. BVA Decision
   - If they grant the relief, you finally win.
   - If they remand to the RO for more development, you are still in the game/on the hamster wheel.
   - If they deny, consider appealing to the CAVC so you can try for a new hamster wheel ticket there.
IV. **When You Win**

If BVA grants, file goes back to RO for them to implement the decision.
- If BVA only grants S/C & doesn’t address rating &/or ED, RO will still need to assign those.
  - For ratings, that may often mean new C&P exams.
RO will issue new rating decision & administrative decision re: attorney fee.

**Fee Decision**
- If VA withholds, fee calculated based on date of decision, not date they actually pay.
- They take a $100 “service charge” out of the fee.
- Make sure they get it right, because an NOD for these must be filed within 60 days.

**Due Process Waiver** (If you don’t file this after your fee decision, it can take another 60 days for them to pay you.)

**Vendor Form** (Get it from the Attorney Fee Coordinator (AFC)) one for each RO you deal with.
Chapter 2—A VA Claim from Beginning to “End”

**Flow Chart**

1. Claimant files claim
   - VA Regional Office sends VCAA letter
   - VA Regional Office mails notice of its decision
   - Claimant files notice of disagreement
   - VA mails statement of the case
   - Claimant files a Substantive Appeal
     - Board of Veterans Appeals decides case
     - Appeal to CAVC within 120 days of BVA decision
   - Appeal to Federal Circuit within 60 days of judgment entering at CAVC
   - If a case is in court, fee agreement can be entered into with claimant

   - Fee agreement can be entered into if NOD is filed on or after 6/20/07
   - Must request DRO review within 60 days of VA letter offering it

   - Optional: Claimant can request DRO review
   - VARO mails DRO decision
   - VA form 9 must be filed within 60 days of mailing of SOC or remainder of one year from mailing of rating decision, whichever is later

Handling a VA Service Connected Disability Claim
Chapter 2—A VA Claim from Beginning to “End”

1. **File claim or referred claim**

2. **VCAA Notice from RO (letter from RO about what it has done and what the veteran needs to do)**

3. **Notice of Action letter and rating decision**

4. **File Notice of Disagreement (NOD)—within one year of RD**

5. **Receive Appeal Selection letter from RO and select DRO or TRAD appeal**

6. **Get new decision from RO. If denial it will be a Statement of the Case (SOC). If granted it will be DRO decision or RD. You could get both.**

7. **If you have a Statement of the Case, file VA-9. (If you have DRO decision or RD, go back to NOD stage.)**

8. **File VA-9 within 60 days (Board hearing request?)**

9. **If new evidence submitted after VA-9, RO must issue Supplemental Statement of the Case (SSOC). Response must be filed within 30 days.**

10. **If no new evidence submitted after VA-9 and no hearing request, BVA will render decision**
Chapter 2—A VA Claim from Beginning to “End”

BVA Grant

RO must issue a Notice of Action Letter and Rating Decision to implement grant

Go back to page 1 to follow what comes after Rating Decision
Chapter 2—A VA Claim from Beginning to “End”

1. **BVA Denial or Partial Grant**

2. **Appeal to CAVC and get the Court to remand the case back to the BVA**

3. **BVA gets the case back from the court and gives the veteran an opportunity to submit new evidence before it decises the case again**

4. **BVA sends veteran (and hopefully us) a 90-day letter giving us 90 days to submit new evidence**

5. **We develop new evidence and submit response to BVA’s 90-day letter**

6. **BVA decision (is it a denial, grant, or remand?)**
After RO completes all remand instructions, RO gets to make a new decision.

**BVA Remand**

If RO grants, RO must issue a Notice of Action Letter and Rating Decision (go back to page 1).

If RO denies, RO must issue a SSOC (go back to page 1).

File goes back to the RO for the RO to process remand instructions.

Remember to look at grants that follow a BVA remand carefully; you may need to remind the RO to issue a SSOC if the award does not represent a full grant!
## COMMON VA ABBREVIATIONS, ACRONYMS, FORMS

<table>
<thead>
<tr>
<th>AFC</th>
<th>Attorney Fee Coordinator (at RO)</th>
<th>Many of them can be your best friend. Get to know them and if you’re lucky, they can do more than just help you get paid. A directory is available on the wiki.</th>
</tr>
</thead>
<tbody>
<tr>
<td>AO</td>
<td>Agent Orange</td>
<td>Think Vietnam, Type II diabetes mellitus (DM), peripheral neuropathy (PN), prostate and other cancers, Nehmer, Haas. Proof of boots on the ground for presumed exposure.</td>
</tr>
<tr>
<td>AOJ</td>
<td>Agency of Original Jurisdiction</td>
<td>Usually just means RO (Regional Office).</td>
</tr>
<tr>
<td>AMC</td>
<td>Appeals Management Center</td>
<td>A sort of “Super RO.” Arguable as to how super it is. Where BVA sometimes sends a case for further development if it doesn’t send it back to the RO. Attorney cases should not go there. If it ends up there, get it out.</td>
</tr>
<tr>
<td>BoD</td>
<td>Benefit of the Doubt</td>
<td>Part of this so-called vet-friendly, non-adversarial system. When the evidence does not preponderate one way or the other and is in approximate equipoise (i.e., 50/50 or “as likely as not”) then vet gets BoD. (Vets often assume they always get BoD and misunderstand the concept that it needs to be 50/50 first.)</td>
</tr>
<tr>
<td>BVA</td>
<td>Board of Veterans Appeals</td>
<td>Or “Board” -- Where you eventually go after an RO denial -- known for issuing decisions that are sometimes less-than-stellar (both in style and substance).</td>
</tr>
<tr>
<td>C-file</td>
<td>Claims file</td>
<td>A disorganized and probably incomplete collection of vet’s VA paperwork; essential that it get a fine-tooth-comb treatment for, <em>inter alia</em>, any red flags or golden tickets. Get a copy of it as soon as possible. Look at the original if you can. Usually kept @ the RO.</td>
</tr>
<tr>
<td>C&amp;P</td>
<td>Compensation &amp; Pension</td>
<td>C&amp;P Service is a part of the VA division that administers benefits. For our purposes, “C&amp;P” most often refers to VA medical exams (ostensibly) to determine SC or (more often) lack thereof.</td>
</tr>
<tr>
<td>CAVC</td>
<td>U.S. Court of Appeals for Veterans’ Claims</td>
<td>Or “Court” -- Also seen in older decisions as CVA or CoVA (“Court of Veterans Appeals”).</td>
</tr>
<tr>
<td>CAFC</td>
<td>U.S. Court of Appeals for the Federal Circuit</td>
<td>They have the unfortunate chore of interpreting CAVC decisions.</td>
</tr>
<tr>
<td>CLS</td>
<td>Central Legal Staff</td>
<td>Part of CAVC, attorneys who facilitate pre-briefing conferences, help resolve procedural disputes, deal with requests for <em>en banc</em> review, etc.</td>
</tr>
<tr>
<td>Colvin</td>
<td>Colvin v. Derwinski, 1 Vet. App. 171 (1991).</td>
<td>The Board is required to consider only independent medical evidence to support its findings rather than provide its own medical judgment. This is commonly called a Colvin violation.</td>
</tr>
<tr>
<td>CM/ECF</td>
<td>Case Management/Electronic Case Filing</td>
<td>The Court’s system for e-filing all documents except appeal-initiating documents—those are e-mailed.</td>
</tr>
<tr>
<td>CUE*</td>
<td>Clear &amp; Unmistakable Error</td>
<td>CUE is not really a “claim,” but rather a collateral attack on a final decision. It’s actually a request for revision based on CUE. It’s the only way you can get EED back to original date of unappealed, final claim— if you prove elements discussed in Russell. Claim can’t be based on DTA failures or how evidence was weighed. Must be legal or factual error that was also outcome-determinative.</td>
</tr>
<tr>
<td>*CUE</td>
<td>Clear &amp; Unmistakable Evidence</td>
<td>This abbreviation would probably only be used when context makes it understandable that it doesn’t mean standard CUE. This CUE is what VA needs to show to rebut presumptions of soundness or aggravation.</td>
</tr>
<tr>
<td>DC</td>
<td>Diagnostic Code</td>
<td>4-digit numbers assigned to various conditions listed in archaic rating schedule.</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>De Novo</td>
<td>Latin for Do Over</td>
<td>Term we learned in law school that does not always translate with DROs or BVA. (They don’t speak Latin.)</td>
</tr>
<tr>
<td>DIC</td>
<td>Dependency &amp; Indemnity Compensation</td>
<td>Widow’s (or other survivors’) benefit.</td>
</tr>
<tr>
<td>DRO</td>
<td>Decision Review Officer</td>
<td>A supervisor at the RO. After you get a RD (rating decision) you want to appeal, you can ask for DRO review first before going on up to BVA.</td>
</tr>
<tr>
<td>DTA</td>
<td>Duty to Assist</td>
<td>Addressed by VCAA, described by VA as “not a one way street,” (vet has some duties as well), failure of DTA can be grounds for appeal, but cannot form the basis of CUE.</td>
</tr>
<tr>
<td>DVA</td>
<td>Department of Veterans Affairs</td>
<td>Just an alternative abbreviation to confuse you. Not to be mixed-up with DAV, though they are closely-associated.</td>
</tr>
<tr>
<td>EAJA</td>
<td>Equal Access to Justice Act</td>
<td>What allows you to get paid for work done at CAVC level—if you “win.”</td>
</tr>
<tr>
<td>ED</td>
<td>Effective Date</td>
<td>With some important exceptions, it is usually the date VA receives the claim, including requests to reopen.</td>
</tr>
<tr>
<td>EED</td>
<td>Earlier Effective Date</td>
<td>Facts and circumstances may allow argument for an EED. One way to get it is proving CUE. When looking at a RD, be sure to see if the ED is appealable. (Outside of a CUE argument, there is no such thing as a free-standing new claim for EED.)</td>
</tr>
<tr>
<td>EPTS or EPTE</td>
<td>Existed Prior to Service/Entrance</td>
<td>Conditions often noted on entrance exam. VA can try to deny SC based on EPTS, but if vet shows a worsening in service, then it is usually presumed aggravated by service (and therefore SC) and VA must rebut.</td>
</tr>
<tr>
<td>GAF</td>
<td>Global Assessment of Functioning</td>
<td>Common psych test with scores ranging from 0-100. The lower the score, the less able vet is to function in work and daily life. There used to be a sort of unofficial “rule of thumb” that certain GAFs called for certain ratings: 0-40=100%, 41-50=70%, 51-60=50%, 61-70=30%, 71-80=10%, 81-100=0%.</td>
</tr>
<tr>
<td>GC</td>
<td>General Counsel</td>
<td>Also seen as VAGC. Attorneys for VA (i.e., the Secretary, part of OGC (Office of General Counsel) and what is often referred to as “Group VII” or G7. They put out precedential opinions seen as VAOGCPREC or Prec. Op. Gen. Coun.</td>
</tr>
<tr>
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<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>GWI/GWS</td>
<td>Gulf War Illness/Syndrome</td>
<td>Look for “undiagnosed” illnesses with symptoms similar to fibromyalgia, chronic fatigue, etc.</td>
</tr>
<tr>
<td>GWOT</td>
<td>Global War on Terror</td>
<td>Where we are getting all the TBIs, burns, and amputations from.</td>
</tr>
<tr>
<td>I/R</td>
<td>Increased Rating</td>
<td>Type of claim filed to get higher rating for already SC condition. Vet just needs to say he thinks problem has worsened. Then he should get a new C&amp;P exam.</td>
</tr>
<tr>
<td>IME</td>
<td>Independent Medical Expert/Exam</td>
<td>BVA sometimes will send a case out for a so-called “independent” opinion. Good luck.</td>
</tr>
<tr>
<td>IRIS</td>
<td>Inquiry Routing &amp; Information System</td>
<td>On the VA website. A means of contacting them with questions in hopes of getting answers.</td>
</tr>
<tr>
<td>JMR</td>
<td>Joint Motion for Remand</td>
<td>What you usually want to get as the result of a pre-briefing (“Rule 33”) conference. Be careful about how it’s drafted to protect you below. Make sure GC concedes error so you can get EAJA fee.</td>
</tr>
<tr>
<td>JSRRC</td>
<td>Joint Services Records Research Center</td>
<td>Formerly known as USASCRUR or CRUR — Where VA is supposed to get PTSD stressor confirmation.</td>
</tr>
<tr>
<td>M1</td>
<td>VA Health Care Adjudication Manual</td>
<td>Internal “How-To” book for conducting medical exams, etc.</td>
</tr>
<tr>
<td>M21-1MR</td>
<td>VA Claims Adjudication Manual Rewrite</td>
<td>Usually just called M21. The “How-To” book for managing and evaluating claims. Its provisions are substantive and have the same authority as VA regulations.</td>
</tr>
<tr>
<td>MPFs/MPRs</td>
<td>Military Personnel File/Records</td>
<td>If they could be pertinent to the case, be sure you get these from NPRC or be sure they are in the C-file.</td>
</tr>
<tr>
<td>NARA</td>
<td>National Archives &amp; Records Administration</td>
<td>Helpful research source. NPRC is a division of it.</td>
</tr>
<tr>
<td><strong>NME or N&amp;M</strong></td>
<td><strong>New &amp; Material Evidence</strong></td>
<td></td>
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<tr>
<td>---------------</td>
<td>-----------------------------</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Necessary for reopening. It’s easy to get new stuff. (But it’s usually just cumulative). What’s harder to get is evidence that is material and capable of substantiating the claim. Usually need a good nexus or quasi-nexus opinion or some strong lay statements to cross the low materiality threshold.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>NOA</strong></th>
<th><strong>Notice of Appeal</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>What you file with CAVC within 120 days of BVA decision. You should file a Notice of Appearance along with it.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>NOD</strong></th>
<th><strong>Notice of Disagreement</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>What you need to file to appeal a RD. Must be filed with RO within one year of notice of decision. Tell which findings you disagree with and why, say you desire appellate review. NOD may also consist of any pro se correspondence to VA expressing dissatisfaction with decision.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>NPRC</strong></th>
<th><strong>National Personnel Records Center</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In St. Louis, where most military records are kept. Site of the legendary 1973 fire that allegedly destroyed a lot of records (over 2/3 for those discharged from Army before 1960 and about 2/3 of those discharged from AF before 1964 — certain alphabetical sections). Some records can be reconstructed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>NSC</strong></th>
<th><strong>Non-Service-Connected</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Disabilities often noted on RDs as having been determined (either officially or unofficially) as not related to service. Sometimes a basis for pension as opposed to disability compensation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>NVLSP</strong></th>
<th><strong>National Veterans Legal Service Program</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Independent, non-profit organization. Excellent resource for publications, not the least of which is your Bible, the Veterans’ Benefits Manual (VBM).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>NWG</strong></th>
<th><strong>Not Well-Grounded</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Seen in older cases. A claim had to pass the “well-groundedness” threshold before it would be accepted and processed. VCAA did away with that requirement.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>OMPF</strong></th>
<th><strong>Official Military Personnel File</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Should be available via NPRC.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>POW</strong></th>
<th><strong>Prisoner of War</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>POWs are afforded a broad range of perks, such as having disabilities presumed SC no matter when they manifest themselves.</td>
</tr>
<tr>
<td><strong>PTSD</strong></td>
<td>What we know as Post-Traumatic Stress Disorder</td>
</tr>
<tr>
<td><strong>QTC</strong></td>
<td>Allegedly stands for “Quality, Timeliness &amp; Customer service”</td>
</tr>
<tr>
<td><strong>R&amp;B</strong></td>
<td>Reasons &amp; Bases</td>
</tr>
<tr>
<td><strong>RBA</strong></td>
<td>Record Before the Agency</td>
</tr>
<tr>
<td><strong>RD</strong></td>
<td>Rating Decision</td>
</tr>
<tr>
<td><strong>RO</strong></td>
<td>Regional Office</td>
</tr>
<tr>
<td><strong>RoPE</strong></td>
<td>Rule of Prejudicial Error</td>
</tr>
<tr>
<td><strong>RoP or RP</strong></td>
<td>Record of Proceedings</td>
</tr>
<tr>
<td><strong>SC</strong></td>
<td>Service-Connected, Service Connection</td>
</tr>
<tr>
<td><strong>SMC</strong></td>
<td>Special Monthly Compensation</td>
</tr>
<tr>
<td><strong>SMRs/STRs</strong></td>
<td>Service Medical/Treatment Records</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>SOC</td>
<td>Statement of the Case</td>
</tr>
<tr>
<td>SSC or SiSC</td>
<td>Statement in Support of Claim (Form 4138)</td>
</tr>
<tr>
<td>SSOC</td>
<td>Supplemental Statement of the Case</td>
</tr>
<tr>
<td>Stegall</td>
<td>Stegall v. West, 11 V et. A pp. 268 (1998)</td>
</tr>
<tr>
<td>TBI</td>
<td>Traumatic Brain Injury</td>
</tr>
<tr>
<td>TDIU</td>
<td>Total Disability &amp; Individual Employability</td>
</tr>
<tr>
<td>USASCRUR</td>
<td>U.S. Armed Services Center for Research of Unit Records</td>
</tr>
<tr>
<td>VA</td>
<td>Department of Veterans’ Affairs</td>
</tr>
<tr>
<td>VACO</td>
<td>Veterans Affairs Central Office</td>
</tr>
<tr>
<td>VACOLS</td>
<td>Veterans Appeals Control &amp; Locator System</td>
</tr>
<tr>
<td>VAMC</td>
<td>VA Medical Center</td>
</tr>
<tr>
<td>VARO</td>
<td>VA Regional Office</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>VAX</td>
<td>VA Exam</td>
</tr>
<tr>
<td>VAE</td>
<td>VA Exam</td>
</tr>
<tr>
<td>VBA</td>
<td>Veterans Benefits Administration</td>
</tr>
<tr>
<td>VBM</td>
<td>Veterans Benefits Manual</td>
</tr>
<tr>
<td>VCAA</td>
<td>Veterans Claims Assistance Act</td>
</tr>
<tr>
<td>VLJ (ALJ)</td>
<td>Veterans Law Judge/Administrative Law Judge</td>
</tr>
<tr>
<td>VSO</td>
<td>Veterans Service Organization (or Officer)</td>
</tr>
<tr>
<td>WTF</td>
<td>What you might think when you read a RD, C&amp;P report, or BVA opinion</td>
</tr>
</tbody>
</table>
## COMMON FORMS

<table>
<thead>
<tr>
<th>Form</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form 9</td>
<td>Form used to Appeal to BVA</td>
<td>Also called VA-9 or I-9. Generally must be filed within 60 days of SOC to perfect substantive appeal.</td>
</tr>
<tr>
<td>Form 10-5345</td>
<td>Request for &amp; Authorization to Release Medical Records</td>
<td>Form you use to get VA medical records.</td>
</tr>
<tr>
<td>Form 21a</td>
<td>Application for Accreditation as Claims Agent or Attorney</td>
<td>You must file this with OGC and get accredited prior to representing a veteran before the VA. They should give you an accreditation number.</td>
</tr>
<tr>
<td>Form 21-22a</td>
<td>Appointment of Individual as Claimant’s Representative</td>
<td>Referred to as “22a.” Must be filed with RO at outset of representation. And may need to be re-filed wherever the case goes.</td>
</tr>
<tr>
<td>Form 21-526</td>
<td>Original Claim for Compensation or Pension</td>
<td>Only one of these needs to be filed. It will usually support any subsequent claims or actions. By the time you get a case, this should have already been filed.</td>
</tr>
<tr>
<td>Form 21-534</td>
<td>Claim for Dependency &amp; Indemnity Compensation</td>
<td>Filed for widow’s/survivor’s benefits. Another form that probably would have been filed before you see the case. If you hear from a widow who hasn’t filed yet, make sure she files within a year after the veteran’s death, if possible to get the ED set as the date of death rather than date of filing.</td>
</tr>
<tr>
<td>Form 21-4138</td>
<td>Statement in Support of Claim (SSC/SiSC)</td>
<td>Usually referred to as a 4138. You will probably see a lot of these in the C-file. Used for lay statements, NODs, new claims, reopening requests, etc.</td>
</tr>
<tr>
<td>Form 21-4142</td>
<td>Authorization &amp; Consent to Release Information to DVA</td>
<td>Basic release and consent form.</td>
</tr>
<tr>
<td>Form 21-8940</td>
<td>Application for Increased Compensation Based on Unemployability</td>
<td>To file for TDIU. This is considered a claim for increased ratings. You don’t need to use the form, but it’s easier for them to process, both mentally and clerically. Plus, they will deny if they don’t have it.</td>
</tr>
<tr>
<td>Form SF-180</td>
<td>For requesting military records</td>
<td>Get it from NPRC website. Look at page 3 of it to see where to fax or mail it.</td>
</tr>
</tbody>
</table>
### COMMON MILITARY ABBREVIATIONS/ACRONYMS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>AD</td>
<td>Active Duty</td>
<td>Often seen on DD-214s and other documents in conjunction with abbreviations for specific military branch, such as ADAF.</td>
</tr>
<tr>
<td>ADT</td>
<td>Active Duty for Training</td>
<td>Reservists’ 2-week drills.</td>
</tr>
<tr>
<td>AFSC</td>
<td>Air Force Specialty Code</td>
<td>Fancy AF equivalent for MOS.</td>
</tr>
<tr>
<td>APFT</td>
<td>Army Physical Fitness Test</td>
<td>Look at results of these and see if any restrictions or “profiles” were imposed.</td>
</tr>
<tr>
<td>AWOL</td>
<td>Absent Without Leave</td>
<td>Not usually a good sign if you see a lot of this in vet’s records, but if they have a good discharge and good excuses documented, those excuses may even help the claim. But AWOL accidents or injuries can be attributed to misconduct and not compensable.</td>
</tr>
<tr>
<td>BCMR</td>
<td>Board for Correction of Military Records</td>
<td>Sometimes used to change military findings that may bear on VA claims.</td>
</tr>
<tr>
<td>DA-20</td>
<td>Department of Army form listing dates and places of veteran’s service</td>
<td>Can be extremely helpful in, for example, narrowing down time frames and locations for PTSD stressors or other events.</td>
</tr>
<tr>
<td>DD-214</td>
<td>Veteran’s separation paper(s)</td>
<td>Important to have. Where you can see dates of service, type of discharge, any medals or awards, MOS, etc.</td>
</tr>
<tr>
<td>IDT</td>
<td>Inactive Duty for Training</td>
<td>Reservists’ weekend drills.</td>
</tr>
<tr>
<td>LOD</td>
<td>Line of Duty</td>
<td>Also seen as ILOD (in LOD) or just LD. Basically, a military determination that in-service condition was incurred not as a result of willful misconduct.</td>
</tr>
<tr>
<td>MEB</td>
<td>Medical Evaluation Board</td>
<td>Determines medical fitness for remaining on duty. Can be pertinent to your claim.</td>
</tr>
<tr>
<td>MOS</td>
<td>Military Occupational Specialty</td>
<td>Noted on DD-214. Can give you clues as to what vet may have been exposed to in his service job. But keep in mind that they probably did other types of work as well.</td>
</tr>
<tr>
<td>MP</td>
<td>Usually stands for Military Police</td>
<td>Sometimes a vet will say that MPs made a report of an incident or accident.</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
<td>-------</td>
</tr>
<tr>
<td>NCOIC</td>
<td>Non-Commissioned Officer in Charge</td>
<td>Sometimes a vet will say he reported an incident to this person who is probably now no longer living.</td>
</tr>
<tr>
<td>OEF</td>
<td>Operation Enduring Freedom</td>
<td>Skirmish in Afghanistan</td>
</tr>
<tr>
<td>OIF</td>
<td>Operation Iraqi Freedom</td>
<td>Skirmish in Iraq</td>
</tr>
<tr>
<td>PCS</td>
<td>Permanent Change of Station</td>
<td>Basically, a move to a new base. Vets will often use this as a verb. “Then I was PCS’d to Fort Leavenworth.” By the way, if you do hear Leavenworth, that’s a red flag to make sure it wasn’t the prison.</td>
</tr>
<tr>
<td>PEB</td>
<td>Physical Evaluation Board</td>
<td>Determines fitness to remain in service. Can be pertinent to your claim.</td>
</tr>
<tr>
<td>REFRAD</td>
<td>Request for Early Release from Active Duty</td>
<td>Of course, see what it was based on.</td>
</tr>
<tr>
<td>SPN</td>
<td>Separation code numbers</td>
<td>Often on DD-214s from Vietnam era showing reasons for separation. Some interesting ones: 262 (bedwetting), 281 (unsanitary habits), 46C (apathy/obesity), 46B (sexual deviate), and 249-257 (various forms of homosexuality).</td>
</tr>
<tr>
<td>TDRL</td>
<td>Temporary Disability Retirement List</td>
<td>Where they may go if they will be medically retired. Must be re-evaluated by PEB.</td>
</tr>
<tr>
<td>TDY</td>
<td>Temporary Duty</td>
<td>Short duty away from base. May be hard to document. Usually when non-VN-stationed vet set foot in VN.</td>
</tr>
</tbody>
</table>
### A FEW COMMON MEDICAL ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALS</td>
<td>Amyotrophic Lateral Sclerosis (Lou Gehrig’s disease)</td>
<td>Any qualified veteran with this diagnosis is now automatically service-connected for it, no matter when it was diagnosed.</td>
</tr>
<tr>
<td>ADLs</td>
<td>Activities of Daily Living</td>
<td>Occupational therapy assessments describe vet’s ability to take care of himself. Often noted in mental and orthopedic cases.</td>
</tr>
<tr>
<td>CC</td>
<td>Chief Complaint</td>
<td>Medical complaints. Vets have plenty of other complaints, but they usually save those for you.</td>
</tr>
<tr>
<td>COPD</td>
<td>Chronic Obstructive Pulmonary Disease</td>
<td>Often caused by asbestos, fumes, or chemical exposure. Look at MOS or duty locations.</td>
</tr>
<tr>
<td>DDD</td>
<td>Degenerative Disc Disease</td>
<td>Usually need good proof of continuity and strong nexus opinions in back cases.</td>
</tr>
<tr>
<td>DJD</td>
<td>Degenerative Joint Disease</td>
<td>Same for these. A nd strong opinion that there is damage beyond normal progression helps, too.</td>
</tr>
<tr>
<td>DSM-IV</td>
<td>Diagnostic &amp; Statistical Manual (of Mental Disorders), 4th Ed.</td>
<td>Assists in diagnosing psych conditions and used in conjunction with rating schedule to assign degrees of disability to PTSD and other mental conditions.</td>
</tr>
<tr>
<td>DX</td>
<td>Diagnosis</td>
<td>If you’re not familiar with common medical abbreviations, find a good list and learn them.</td>
</tr>
<tr>
<td>EtOH</td>
<td>Alcohol</td>
<td>What most of us need to stay sane in this business.</td>
</tr>
<tr>
<td>F/U</td>
<td>Follow-Up</td>
<td>When you look at SMRs be sure to see dates. What may at first look like a separate but similar illness may only be a follow-up for the original condition. Not as strong as if vet was treated for same problem at different times.</td>
</tr>
<tr>
<td>GERD</td>
<td>Gastroesophageal Reflux Disease</td>
<td>Bad indigestion. Not uncommon and may be worth a good 10%. Also, just fun to say.</td>
</tr>
<tr>
<td>GSW</td>
<td>Gunshot Wound</td>
<td>Be sure to consider all aspects of the injury—bone, muscle, nerves, scarring.</td>
</tr>
<tr>
<td>HX</td>
<td>History</td>
<td>Besides medical, can also include what vet’s story to doctor is about how he got hurt.</td>
</tr>
<tr>
<td>LBP</td>
<td>Low Back Pain</td>
<td>Pain alone isn’t compensable, but make sure it is considered and see if it could show an underlying secondary condition. If they hurt their back in service years ago, never got treated for years, and now have back problems, it’s a very weak case.</td>
</tr>
<tr>
<td>LOC</td>
<td>Loss of Consciousness</td>
<td>They can still have a good concussion without LOC.</td>
</tr>
<tr>
<td>MG</td>
<td>Muscle Group</td>
<td>Consider ortho effects from these injuries.</td>
</tr>
<tr>
<td>NOS</td>
<td>Not Otherwise Specified</td>
<td>Often seen with mental diagnoses that can’t be pinpointed to a specific disorder.</td>
</tr>
<tr>
<td>PCT</td>
<td>Porphyria Cutanea Tardia</td>
<td>Skin condition presumptively connected to AO exposure. Also linked to liver conditions, by the way.</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
<td>Notes</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>-------</td>
</tr>
<tr>
<td>PDR</td>
<td>Physician’s Desk Reference</td>
<td>Pharmaceutical Bible. A good look at vet’s RX’s can help the case. If you see an anti-depressant, for example, you may have a secondary claim for depression that vet didn’t bring up.</td>
</tr>
<tr>
<td>PULHES</td>
<td>Physical capacity/stamina, Upper extremities, Lower extremities, Hearing, Eyes, &amp; psychiatric</td>
<td>Often noted on entrance and separation exams. Measurement of soldier’s overall health. Why they think “psychiatric” starts with an “S” is an unsolved but not unusual mystery.</td>
</tr>
<tr>
<td>RA</td>
<td>Rheumatoid Arthritis</td>
<td>Often seen in Gulf War Syndrome cases. Either a diagnosis of it or notes that say “R/O RA”</td>
</tr>
<tr>
<td>R/O</td>
<td>Rule Out</td>
<td>Make sure often illegible records say this or not. Some conditions may look like a diagnosis when they are really just instructions to rule them out.</td>
</tr>
<tr>
<td>ROM</td>
<td>Range of Motion</td>
<td>What ratings schedule bases most orthopedic conditions on. Often tested when vet is medicated and often not measured correctly with the goniometer they are supposed to use.</td>
</tr>
<tr>
<td>SFW</td>
<td>Shell Fragment Wound</td>
<td>What they often call shrapnel wounds.</td>
</tr>
<tr>
<td>SOB</td>
<td>Also stands for Shortness of Breath</td>
<td>What happens when vet yells at the VAMC receptionist after waiting 4 hours for his 5 minute exam.</td>
</tr>
<tr>
<td>SX</td>
<td>Symptoms</td>
<td>Medical abbreviations use a lot of Xs.</td>
</tr>
<tr>
<td>WNL</td>
<td>Within Normal Limits</td>
<td>Used for describing virtually any condition that appears normal on exam. VA doctors use it a lot.</td>
</tr>
</tbody>
</table>
### Handling a VA Service Connected Disability Claim

**Chapter 2—A VA Claim from Beginning to “End”**

**APPOINTMENT OF INDIVIDUAL AS CLAIMANT'S REPRESENTATIVE**

**PRIVACY ACT NOTICE:** VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 38 U.S.C. 5701(b) and 7332. Title 38, United States Code, allows us to ask for this information. We estimate that claimants and individuals appointed for purposes of representation will each need an average of 5 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. A Valid OMB control number can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

**RESPONDENT BURDEN:** We need this information to recognize the individuals appointed by claimants to act on their behalf in the preparation, presentation, and prosecution of claims for VA benefits (38 U.S.C. 5902, 5903, and 5904) and for those individuals to accept appointment. We will also use the information to verify consent for disclosure of VA records to the appointed representative (38 U.S.C. 5701(b) and 7332) Title 38, United States Code, allows us to ask for this information. We estimate that claimants and individuals appointed for purposes of representation will each need an average of 5 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. A Valid OMB control number can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

| 1. VA FILE NO(S) (include prefix) |

| 2. NAME OF CLAIMANT (Veteran, guardian, beneficiary, dependent, or next of kin) |
| 4. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN |
| 5. SERVICE NUMBERS |
| 6. BRANCH OF SERVICE |
| 7A. NAME OF INDIVIDUAL APPOINTED AS CLAIMANT'S REPRESENTATIVE |
| 7B. INDIVIDUAL IS (check appropriate box) |
| 7C. SIGNATURE OF REPRESENTATIVE NAMED IN ITEM 7A |
| 7D. SIGNATURE OF CLAIMANT NAMED IN ITEM 2 |
| 8. ADDRESS OF INDIVIDUAL APPOINTED AS CLAIMANT'S REPRESENTATIVE (No. and street or rural route, city or P.O., State, and ZIP Code) |

**Note - If you would prefer to have a service organization assist you with your claim, you may use VA Form 21-22, "Appointment of Veterans Service Organization As Claimant’s Representative."**

**INDIVIDUALS PROVIDING REPRESENTATION UNDER SECTION 14.630**

The appointment of the individual named in Item 7A (the representative) authorizes the individual to represent the claimant named in Item 2 for a particular claim pursuant to the provisions of 38 CFR 14.630. By our signatures below, we, the representative and the claimant, attest that no compensation will be charged or paid for the individual named in Item 7A.

**7C. SIGNATURE OF REPRESENTATIVE NAMED IN ITEM 7A**

**7D. SIGNATURE OF CLAIMANT NAMED IN ITEM 2**

**8. ADDRESS OF INDIVIDUAL APPOINTED AS CLAIMANT'S REPRESENTATIVE (No. and street or rural route, city or P.O., State, and ZIP code)**

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*Continued on Reverse*
### Chapter 2—A VA Claim from Beginning to “End”

**Handling a VA Service Connected Disability Claim**

<table>
<thead>
<tr>
<th>9. AUTHORIZATION FOR REPRESENTATIVE’S ACCESS TO RECORDS PROTECTED BY SECTION 7332, TITLE 38, U.S.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unless I check the box below, I do not authorize VA to disclose to the individual named in Item 7A any records that may be in my file relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.</td>
</tr>
</tbody>
</table>

- [ ] I authorize the VA facility having custody of my VA claimant records to disclose to the individual named in Item 7A all treatment records relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia. Redisclosure of these records by my representative, other than to VA or the Court of Appeals for Veterans Claims, is not authorized without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the individual named in Item 7A, either by explicit revocation or the appointment of another representative. |

<table>
<thead>
<tr>
<th>10. LIMITATION OF CONSENT.</th>
</tr>
</thead>
<tbody>
<tr>
<td>My consent in Item 9 for the disclosure of records relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia is limited as follows:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11. AUTHORIZATION FOR REPRESENTATIVE TO ACT ON CLAIMANT’S BEHALF TO CHANGE CLAIMANT’S ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unless I check the box below, I do not authorize the individual named in Item 7A to act on my behalf to change my address in my VA records.</td>
</tr>
</tbody>
</table>

- [ ] I authorize the individual named in Item 7A to act on my behalf to change my address in my VA records. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the individual named in Item 7A, either by explicit revocation or the appointment of another representative. |

### CONDITIONS OF APPOINTMENT

I, the claimant named in Item 2, hereby appoint the individual named in Item 7A as my representative to prepare, present, and prosecute my claims for any and all benefits from the Department of Veterans Affairs (VA) based on the service of the veteran named in Item 4. If the individual named in Item 7A is an accredited agent or attorney, the scope of representation provided before VA may be limited by the agent or attorney as indicated below in Item 15. If the individual indicated in Item 7A is providing representation under 14.630, such representation is limited to a particular claim only. I authorize VA to release any and all of my records (other than as provided in Items 9 and 10) to that individual appointed as my representative, and if the individual in Item 7A is an accredited agent or attorney, this authorization includes the following individually named administrative employees of my representative:

Signed and accepted subject to the foregoing conditions.

<table>
<thead>
<tr>
<th>12. SIGNATURE OF CLAIMANT</th>
<th>13. DATE OF SIGNATURE</th>
<th>14. CLAIMANT’S RELATIONSHIP TO VETERAN</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(If other than the veteran)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15. LIMITATIONS ON REPRESENTATION - AGENTS OR ATTORNEYS ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Unless limited by an agent or attorney, this power of attorney revokes all previously existing powers of attorney)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>16. SIGNATURE OF REPRESENTATIVE</th>
<th>17. DATE OF SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FEES:** Section 5904, Title 38, United States Code, contains provisions regarding fees that may be charged, allowed, or paid for services of agents or attorneys in connection with a proceeding before the Department of Veterans Affairs with respect to benefits under laws administered by the Department.
Chapter 2—A VA Claim from Beginning to “End”

STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.376 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA Programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, SNV A212228, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Failure to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/dopRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (Type or print) | SOCIAL SECURITY NO. | VA FILE NO. | C/CSS -

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

SIGNATURE | DATE SIGNED

ADDRESS

TELEPHONE NUMBERS (Include Area Code)

DAYTIME | EVENING

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

CONTINUE ON REVERSE
The following statement is made in connection with a claim for benefits in the case of the above-named veteran:
INFORMATION AND INSTRUCTIONS FOR COMPLETING THE
VETERAN'S APPLICATION FOR
COMPENSATION AND/OR PENSION

IMPORTANT - Please read the information below carefully to help you complete this form more quickly and accurately. Some parts of the form also contain notes or specific instructions for completing that part.

Frequently Asked Questions

For what do I use VA Form 21-526?

Use VA Form 21-526 to apply for compensation and/or pension benefits.

Should I apply for compensation or pension benefits?

You should apply for **compensation** benefits if:

- You currently have a disability that is the result of an injury, disease, or an event in military service.

You should apply for **pension** benefits if all of the following are true:

- You are age 65 or older or are permanently and totally disabled.
- You served on active duty with at least one day during a period of war.
- Your income and net worth does not exceed certain limits. Visit our website, [http://www.vba.va.gov/bln/21/rates](http://www.vba.va.gov/bln/21/rates) for the maximum yearly income we allow.

Note: Attach current medical evidence showing that you are permanently and totally disabled.

IMPORTANT: If you are a veteran who is age 65 or older, or determined to be disabled by the Social Security Administration, you **DO NOT** have to submit medical evidence with your application unless you are filing for special monthly pension. Special monthly pension is an allowance that may be paid to individuals who, due to mental or physical disability, require the assistance of another person to perform the basic activities of daily living, or their ability to leave home is very limited.

May I apply electronically?

To file a claim for VA compensation or pension electronically, please complete and submit VA Form 21-526, Veteran's Application for Compensation and/or Pension, using VONAPP. The VONAPP (Veterans On Line Application) website is an official U.S. Department of Veterans Affairs (VA) website that enables service members, veterans and their beneficiaries, and other designated individuals to apply for benefits using the Internet. You can apply online at our website, [http://vabenefits.vba.va.gov/vonapp/main.asp](http://vabenefits.vba.va.gov/vonapp/main.asp).

What parts of the form should I complete?

You should complete only the parts related to the benefit for which you are applying:

- If you are applying for compensation **ONLY**, skip parts VII, VIII, IX, X.
- If you are applying for pension, complete the **ENTIRE** form.
- If you need more space to answer a question or have a comment about a specific item on this form, please place it in Part XIII, Item 45, "Remarks." Please identify your answer or comment by the part and item number.
Where can I get help?

You can ask VA to help you fill out the form by contacting a regional office or call center. Before you contact us, make sure you gather the necessary materials and complete as much of the form as you can. You can contact VA in the following ways:

- **By internet:** https://iris.va.gov
- **In person:** You can locate the address of the closest regional office on the website http://www.va.gov/directory or in your telephone book blue pages under "United States Government, Veterans"
- **By telephone:** Please call one of the following telephone numbers:
  1-800-827-1000
  1-800-829-4833 (Hearing Impaired TDD line)
  1-412-395-6272 (If living outside the U.S.)

You can also contact a county or national veterans' service organization (VSO) representative to help you with your claim. If you want to use a representative to help you, consult your local telephone book to contact a particular VSO or contact the closest VA office. Depending on the type of representative you want to designate, we will send you one of the following forms:

- VA Form 21-22, Appointment of Veterans Service Organization as Claimant’s Representative
- VA Form 21-22A, Appointment of Individual as Claimant’s Representative

What should I do when I have finished my application?

- You should provide your signature in Part XII, Item 42A. Be sure to sign every form you fill out before you send it to us. If you don’t sign the form, VA will return it for you to sign, and it will take longer for us to process.
- Attach any materials that support and explain your claim.
- Mail or take your application to the closest VA regional office. VA regional office addresses are available on the internet at http://www.va.gov/directory

Do I need to keep a copy of my application?

It is important that you keep a copy of all completed forms and materials you give to VA.

Social Security and Supplemental Security Income Benefits

Social Security and Supplemental Security Income are two Federal programs that help people with disabilities. While these programs are different in many ways, the Social Security Administration (SSA) administers both programs. If you think you have a disabling condition, you may qualify for benefits under one or both of these programs and should contact Social Security.

How can I contact SSA if I have questions?

You can find answers to most questions and file a claim online at www.socialsecurity.gov. Specific information is available for active duty military, veterans, and their families at www.socialsecurity.gov/woundedwarriors.

You can also contact SSA in the following ways:

- **By phone:** (Monday-Friday, 7 a.m. - 7 p.m. EST) at one of the following toll-free numbers:
  1-800-772-1213
  1-800-325-0778 (TTY if you are deaf or hard of hearing)
- **By mail or in person:** You can locate the address of the Social Security office nearest to you in your telephone book blue pages under "United States Government, Social Security Administration".
SPECIFIC INSTRUCTIONS FOR VA FORM 21-526

Part II - Nature and History of Service-Related Disability(ies)

What disabilities should I list?
List the disease(s) or medical condition(s) that form the basis of your claim for service connected compensation. Be as specific as you can. Indicate the approximate date the disability began and the place of treatment.

Do I have to include any records with this claim form?
If you have records that support your claim, you should attach them to this form. VA will help you obtain records by requesting them from the person, company, or agency that has them. On this form you must tell us the name and address of the person, company or agency that has these records, the approximate time frame covered by them, and the condition for which you were treated. If you received treatment from a non-VA health care provider complete the attached VA Form 21-4142, Authorization and Consent to Release Information to the Department of Veterans Affairs (VA). We will use this form to request these records. Due to Privacy Act regulations, please use only one source of information (Item 7) on each form, as some medical offices will not accept the forms otherwise, which may cause a delay in processing your claim. Additional 21-4142 forms can be obtained from the VA forms website at www.va.gov/vaforms.

Part III - Active Duty Service Information

Do I need to include my active duty service information?
Please provide the information for each period of active duty (provide a copy of your DD214 or other separation papers for all periods of active duty service).

Part IV - Reserve and National Guard Service Information

What if I have Reserve or National Guard Service?
This section tells us if you were a member of the Reserve or National Guard. Complete information for each period of Reserve and National Guard service. Provide a copy of your DD214 or other separation papers for all periods of active service.

Part V - Military Retired/Severance Pay

What if I have received or will receive military pay?
This section asks about your military severance or separation pay, the type, and the amount. If you currently receive military retired pay, we may reduce your retired pay by the amount of any compensation that we award. It is to your advantage because VA compensation is not taxable while retired pay is taxable. However, if you wish to receive military retired pay rather than VA compensation, you must check the box in Item 25. Some veterans receive various readjustment, separation, or severance pay from service departments which may be recouped in full or in part from VA benefit payments.

Part VI - Marital and Dependency Information

Who can I count as a dependent spouse?
A spouse is a person of the opposite sex who is married to the veteran (authority: 38 U.S.C. subsection 101(31)). The marriage must be valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the right to benefits occurred.
Note: It is important that you provide your marital history and that of your spouse.

Who can be recognized as a dependent child?
VA recognizes the veteran's biological child, adopted child, and stepchild. However, the child must be unmarried and:

- under the age of 18, or
- at least 18 but under 23 and pursuing an approved course of education, or
- permanently incapable of self support before reaching the age of 18.
Chapter 2—A VA Claim from Beginning to “End”

SPECIFIC INSTRUCTIONS FOR VA FORM 21-526 (Continued)

Part VII - Non-Service Connected Pension
This section asks you to provide the disabilities that prevent you from working. We also ask you to tell us if you require the regular assistance of another person, if you are housebound, if you are in a nursing home, if you are in receipt of Social Security, or if you have applied for Medicaid.

Part VIII - Income Information
This section asks you to provide specific information about the monthly income you and your dependants receive from all sources. Report the gross amount you receive monthly before deductions are taken out for taxes, health care, insurance, etc. Do not leave any blank boxes in this section! Complete each box with either a dollar figure, "0", or "none." If you expect to receive payment, but you don't know how much it will be, write "Unknown" in the space. If you are not sure about a particular type of income, report it and provide a full explanation of its source. If you are receiving monthly benefits from any source and have a copy of your most recent award letter, please include a copy of the letter with your application.

Part IX - Net Worth
This section asks you to provide specific information about your net worth and that of your dependents. Do not leave any blank boxes in this section! Complete each box with either a dollar figure, "0", or "none." Net worth is the market value of all interest and rights in any kind of property, after subtracting any mortgages and other claims against the property. List all assets except the house in which you live, any reasonable area of land on which it sits, and those items you use everyday, such as your vehicle, clothing and furniture.

Clearly indicate if you and your spouse jointly share assets (such as money in a joint checking account). Report the value of farms or buildings that you or a dependent owns as "real property." You must disclose all financial transactions that involve a transfer of assets, even if the transaction occurred prior to the date of your application for VA pension. A gift of property or a sale below the property's value to a relative residing in the same household does not reduce net worth. Likewise, a gift of property to someone other than a relative residing in your household does not reduce net worth unless it is clear that you have relinquished all rights of ownership, including the right to control the property.

Part X - Medical, Legal or Other Expenses
When determining your eligibility for pension, we may be able to deduct unreimbursed medical expenses from your income for the year in which the expenses are paid. Report the amount of unreimbursed medical expenses, including the Medicare deductions you paid (out-of-pocket) for yourself or relatives you are under an obligation to support. Also, show medical, legal, or other expenses you paid because of a disability for which civilian disability benefits have been awarded. Do not report any expenses you did not pay or expenses for which you were or will be reimbursed.

PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is voluntary; however, no allowance of compensation or pension may be granted unless this form is completed fully as required by law. Giving us you and your dependents' Social Security numbers is mandatory. Applicants are required to provide their SSN and the SSN of any dependents for whom benefits are claimed under Title 38 USC 5101(c)(1). The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by a Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other Federal or state agencies. Income and employment information furnished by you will be compared with income obtained by VA from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103(1)(7)(D) of the Internal Revenue Code of 1986.

RESPONDENT BURDEN: We need this information to determine your eligibility for compensation and/or pension (38 U.S.C. 5101). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 1 hour to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.
**Chapter 2—A VA Claim from Beginning to “End”**

**VETERAN’S APPLICATION FOR COMPENSATION AND/OR PENSION**

**PART I - VETERAN’S INFORMATION**

1. **FOR WHAT BENEFIT ARE YOU APPLYING?**
   - [ ] Compensation
   - [ ] Pension
   - [ ] Both Compensation and Pension

2. **HAVE YOU PREVIOUSLY APPLIED FOR ANY VA BENEFIT(S)?** (Check applicable box)
   - [ ] Pension
   - [ ] Compensation
   - [ ] Other (Specify)

3. **FIRST, MIDDLE, LAST NAME OF VETERAN**

4A. **VETERAN’S SOCIAL SECURITY NO.**

4B. **VA FILE NUMBER (If applicable)**

4C. **SPOUSE’S SOCIAL SECURITY NO.**

4D. **IF YOU SERVED UNDER ANOTHER NAME, GIVE NAME AND PERIOD DURING WHICH YOU SERVED AND SERVICE NO.**

5. **MAILING ADDRESS** (Number and street or rural route, city or P.O., State and ZIP Code)

6. **TELEPHONE NUMBER(S)** (Include Area Code)

7. **E-MAIL ADDRESS** (If applicable)

8A. **DATE OF BIRTH** (Month, day, year)

8B. **PLACE OF BIRTH**

9. **SEX**
   - [ ] Male
   - [ ] Female

10A. **HAVE YOU EVER FILED A CLAIM FOR COMPENSATION FROM THE OFFICE OF WORKERS’ COMPENSATION PROGRAMS?** (Formerly the U.S. Bureau of Employees Compensation)
   - [ ] Yes
   - [ ] No
   
   (If “Yes,” complete Items 10B & 10C)

10B. **WHEN WAS THE CLAIM FILED?** (Mo., day, yr.)

10C. **FOR WHAT DISABILITY ARE YOU RECEIVING BENEFITS?**

**PART II - NATURE AND HISTORY OF SERVICE-RELATED DISABILITY(IES)**

11. **PLEASE PROVIDE NATURE OF SICKNESS, DISEASE, OR INJURIES FOR WHICH THIS CLAIM IS MADE; DATE EACH BEGAN; AND PLACE OF TREATMENT**

   A. **LIST DISABILITY(IES)**
   
   B. **DATE BEGAN**
   
   C. **PLACE OF TREATMENT**

12A. **ARE YOU NOW OR HAVE YOU RECEIVED TREATMENT OR DOMICILIARY CARE AT A VA MEDICAL FACILITY?**
   - [ ] Yes
   - [ ] No
   
   (If “Yes,” complete Items 12B & 12C)

12B. **DATES OF TREATMENT/CARE**
   
   Month
   Day
   Year

12C. **NAME AND ADDRESS OF VA MEDICAL FACILITY**
   (If you need more space use Item 45, “Remarks”)

13A. **HAVE YOU EVER BEEN A PRISONER OF WAR?**
   - [ ] Yes
   - [ ] No
   
   (If “Yes,” complete Items 13B and 13C)

13B. **NAME OF COUNTRY**

13C. **DATES OF CONFINEMENT**
   
   From
   To

14. **ARE YOU CLAIMING A DISABILITY RELATED TO AGENT ORANGE OR OTHER HERBICIDE EXPOSURE?** (If “Yes,” list disability(ies) below)
   - [ ] Yes
   - [ ] No

15. **ARE YOU CLAIMING A DISABILITY RELATED TO ASBESTOS EXPOSURE?** (If “Yes,” list disability(ies) below)
   - [ ] Yes
   - [ ] No

16. **ARE YOU CLAIMING A DISABILITY RELATED TO MUSTARD GAS EXPOSURE?** (If “Yes,” list disability(ies) below)
   - [ ] Yes
   - [ ] No

17. **ARE YOU CLAIMING A DISABILITY RELATED TO IONIZING RADIATION EXPOSURE?** (If “Yes,” list disability(ies) below)
   - [ ] Yes
   - [ ] No

18. **ARE YOU CLAIMING A DISABILITY RELATED TO AN ENVIRONMENTAL HAZARD EXPOSURE DURING THE GULF WAR?** (If “Yes,” list disability(ies) below)
   - [ ] Yes
   - [ ] No

**YOU MUST SIGN AND PRINT YOUR NAME AND DATE THIS FORM IN ITEMS 42A THRU 42C ON PAGE 10.**

**Handling a VA Service Connected Disability Claim**

2–39
PART III - ACTIVE DUTY SERVICE INFORMATION

NOTE: Please complete the information for each period of active duty. Attach DD214 or other separation papers for all periods of active duty. If you do not have your DD214 form or other separation papers, check the box.

<table>
<thead>
<tr>
<th>19A. ENTERED INTO SERVICE</th>
<th>19B. SERVICE NUMBER</th>
<th>19C. SEPARATED FROM SERVICE</th>
<th>19D. BRANCH OF SERVICE</th>
<th>19E. GRADE, RANK OR RATING, ORGANIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>PLACE</td>
<td>DATE</td>
<td>PLACE</td>
<td></td>
</tr>
</tbody>
</table>

PART IV - RESERVE AND NATIONAL GUARD SERVICE INFORMATION

NOTE: Enter complete information for each period of Reserves and National Guard service. Attach any separation papers you have.

<table>
<thead>
<tr>
<th>20A. ENTERED INTO SERVICE</th>
<th>20B. SERVICE NUMBER</th>
<th>20C. SEPARATED FROM SERVICE</th>
<th>20D. SERVICE STATUS (Reserve, National Guard)</th>
<th>20E. GRADE, RANK OR RATING, ORGANIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE</td>
<td>PLACE</td>
<td>DATE</td>
<td>PLACE</td>
<td></td>
</tr>
</tbody>
</table>

21. IF DISABILITY OCCURRED DURING ACTIVE OR INACTIVE DUTY FOR TRAINING, GIVE BRANCH OF SERVICE AND DATE OF OCCURRENCE

22A. ARE YOU NOW A MEMBER OF THE RESERVES OR NATIONAL GUARD? IF SO, GIVE THE BRANCH OF SERVICE

22B. RESERVE STATUS

ACTIVE
RESERVE OBLIGATION
INACTIVE

22C. NAME, ADDRESS AND PHONE NO. OF RESERVE OR NATIONAL GUARD UNIT (If additional space is needed, use Item 45 "Remarks")

PART V - MILITARY RETIRED/SEVERANCE PAY

IMPORTANT - Unless you check the box in Item 25 below, you are telling us that you are choosing to receive VA compensation instead of military retired pay, if it is determined you are entitled to both benefits. If you are awarded military retired pay prior to compensation, we will reduce your retired pay by the amount of any compensation that you are awarded. VA will notify the Military Retired Pay Center of all benefit changes. If you receive both military retired pay and VA compensation, some of the amount you receive may be recouped by VA, or, in the case of Voluntary Separation Incentive (VSI), by the Department of Defense.

23A. ARE YOU RECEIVING MILITARY RETIRED PAY? (If "Yes," complete Items 23C & 23D)

YES
NO

23B. WILL YOU RECEIVE MILITARY RETIRED PAY IN THE FUTURE? (If "Yes," explain, i.e. Future Reserve/National Guard Retirement, Pending MEB/PEB)

YES
NO

23C. BRANCH OF SERVICE

23D. MONTHLY AMOUNT

$26. HAVE YOU EVER APPLIED FOR OR RECEIVED DISABILITY SEVERANCE/SEPARATION PAY, OR ANY OTHER LUMP SUM PAYMENT FROM THE ARMED FORCES? (If "Yes," list type, amount, date it was received, and the branch of service below)

YES
NO

PART VI - MARITAL AND DEPENDENCY INFORMATION

<table>
<thead>
<tr>
<th>27A. MARITAL STATUS (If married, complete Items 27B thru 29D)</th>
<th>27B. SPOUSE'S BIRTHDATE (Mo., day, yr.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARRIED</td>
<td>WIDOWED</td>
</tr>
<tr>
<td>Divorced</td>
<td>NEVER MARRIED</td>
</tr>
</tbody>
</table>

27C. NUMBER OF TIMES YOU HAVE BEEN MARRIED (To include current marriage)

27D. NUMBER OF TIMES YOUR PRESENT SPOUSE HAS BEEN MARRIED (To include current marriage)

27E. IS YOUR SPOUSE ALSO A VETERAN?

YES
NO

27F. SPOUSE'S VA FILE NUMBER (If any)

27G. DO YOU LIVE TOGETHER?

YES
NO

27H. REASON FOR SEPARATION (For example, marital problems, job requirements, health, etc.)

27I. PRESENT ADDRESS OF SPOUSE

27J. AMOUNT YOU CONTRIBUTE TO YOUR SPOUSE'S MONTHLY SUPPORT

YES
NO

27K. HOW WERE YOU MARRIED?

OTHER (Explain)

$
### Part VI - Marital and Dependency Information - Continued

<table>
<thead>
<tr>
<th>28A. Date and Place of Marriage</th>
<th>28B. To Whom Married</th>
<th>28C. Terminated (Death, Divorce)</th>
<th>28D. Date and Place Terminated</th>
</tr>
</thead>
<tbody>
<tr>
<td>MONTH, YEAR</td>
<td>CITY, STATE</td>
<td>MONTH, YEAR</td>
<td>CITY, STATE</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Furnish the following information about each previous marriage of your present spouse (if not applicable, write "N/A").**

<table>
<thead>
<tr>
<th>29A. Date and Place of Marriage</th>
<th>29B. To Whom Married</th>
<th>29C. Terminated (Death, Divorce)</th>
<th>29D. Date and Place Terminated</th>
</tr>
</thead>
<tbody>
<tr>
<td>MONTH, YEAR</td>
<td>CITY, STATE</td>
<td>MONTH, YEAR</td>
<td>CITY, STATE</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Dependency - Dependent Children Information** (If you need additional space, use Item 45 "Remarks")

**Furnish the following information for each of your dependent children:***

<table>
<thead>
<tr>
<th>30A. Name of Child (First, middle initial, last)</th>
<th>30B. Date &amp; Place of Birth (City, state or country)</th>
<th>30C. Social Security Number</th>
<th>30D. Check Each Applicable Category</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>BIOLOGICAL ADOPTED STEPCHILD 18-23 YRS. OLD AND IN SCHOOL SERIOUSLY DISABLED BEFORE AGE 18 CHILD PREVIOUSLY MARRIED</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Furnish the following information for each of your dependent children who do not live with you:**

<table>
<thead>
<tr>
<th>31A. Name(s) of any children not in your custody</th>
<th>31B. Name and Address of person having custody</th>
<th>31C. Monthly amount you contribute to child's support</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Part VII - Non-Service Connected Pension** (If you need additional space use Item 45 "Remarks")

**Note:** You do not have to submit medical evidence or list disabilities if you are age 65 or older, unless you are housebound, or require the regular assistance of another person.

<table>
<thead>
<tr>
<th>32. What disabilities prevent you from working? (List below)</th>
<th>33. Do you need the regular assistance of another person or are you generally confined to your immediate premises?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>YES NO</td>
</tr>
</tbody>
</table>

**Nursing Home Information**

**Note:** You may submit a statement by an official of the nursing home that tells us that you are a patient in the nursing home because of a physical or mental disability. The statement should include the monthly charge you are paying out-of-pocket for your care.

<table>
<thead>
<tr>
<th>34A. Are you now in a nursing home? (If &quot;YES&quot;, complete Items 34B thru 34D)</th>
<th>34B. Name and complete mailing address of the facility</th>
<th>34C. Have you applied for Medicaid?</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES NO</td>
<td></td>
<td>YES NO</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>34D. Does Medicaid cover all or part of your nursing home costs or have you applied and not received a decision?</th>
<th>34E. Are you receiving supplemental social security income (SSI) or have you applied for SSI but no decision has been made?</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES NO</td>
<td>YES NO</td>
</tr>
</tbody>
</table>

You must sign and print your name and date this form in items 42A thru 42C on page 10.
**PART VIII - INCOME INFORMATION** (Provide the income you received from all sources)

**NOTE:** Report the total income before deductions for taxes, insurance, etc. If you do not receive any payments from one of the sources that we list, write “0” or “None” in the space. If you are receiving monthly benefits, give us a copy of your most recent award letter. This will help us determine the amount of benefits you should be paid. Payments from any source will be counted, unless the law says that they don’t need to be counted.

**MONTHLY INCOME** - Provide the income that you and your dependents receive every month. For items 35A -35F, if none, write “0” or “NONE.” Do not leave blank spaces.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>SOURCES OF RECURRING MONTHLY INCOME</th>
<th>VETERAN</th>
<th>SPOUSE</th>
<th>CHILD(REN) (Provide the first, middle initial, and last name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>35A.</td>
<td>Social Security</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35B.</td>
<td>U.S. Civil Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35C.</td>
<td>U.S. Railroad Retirement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35D.</td>
<td>Military Retired Pay</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35E.</td>
<td>Black Lung Benefits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35F.</td>
<td>Other (Interest, dividends, or one-time payments)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**PART IX - NET WORTH** (Provide specific information about the net worth of you and your dependents)

**NET WORTH** is the market value of all interest and rights in any kind of property after subtracting any mortgages or other claims against the property. However, net worth does not include the house you live in or a reasonable area of land it sits on. Net worth also does not include the value of personal items such as your vehicle, clothing, and furniture.

**NOTE:** For items 37A-37F provide amounts. If none, write “0” OR “NONE.” Do not leave blank spaces.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>SOURCE</th>
<th>VETERAN</th>
<th>SPOUSE</th>
<th>CHILD(REN) (Provide the first, middle initial, and last name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>37A.</td>
<td>Cash, non-interest bearing bank accounts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37B.</td>
<td>Interest bearing bank accounts, certificates of deposit (CDs)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37C.</td>
<td>Retirement accounts (IRAs, Keogh Plans, etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37D.</td>
<td>Stocks, bonds, and mutual funds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37E.</td>
<td>Value of business assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37F.</td>
<td>Real property (not your home)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

YOU MUST SIGN AND PRINT YOUR NAME AND DATE THIS FORM IN ITEMS 42A THRU 42C ON PAGE 10.
### PART X - MEDICAL, LEGAL, OR OTHER EXPENSES

**IMPORTANT** - Complete items 38A through 38E only if you are applying for nonservice connected pension.

**MEDICAL, LEGAL OR OTHER EXPENSES** - Family medical expenses you actually paid (out-of-pocket) may be deducted from your income. Show the amount of unreimbursed medical expenses you paid for dependents you are under an obligation to support. Also, show medical, legal, or other expenses you paid because of a disability for which civilian disability benefits have been awarded. When determining your income, we may be able to increase benefits for the year in which the expenses are paid. Do not include any expenses for which you were reimbursed. Be sure to include the Medicare deduction. If more space is needed, you may use Item 45, “Remarks” or attach a separate sheet.

<table>
<thead>
<tr>
<th>38A. AMOUNT YOU PAID</th>
<th>38B. DATE PAID</th>
<th>38C. PURPOSE</th>
<th>38D. PAID TO</th>
<th>38E. PERSON FOR WHOM EXPENSE PAID</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Month, year)</td>
<td></td>
<td>(Doctor’s fees, hospital charges, attorney fees, etc.)</td>
<td>(Name of doctor, hospital, pharmacy, attorney, etc.)</td>
<td>(Self, spouse, child)</td>
</tr>
</tbody>
</table>

### PART XI - DIRECT DEPOSIT

Generally, all Federal payments are required to be made by electronic funds transfer (EFT), also called direct deposit. Please attach a voided personal check or deposit slip or provide the information requested below in Items 39, 40, and 41 to enroll in direct deposit. If you do not have a bank account you can receive a waiver from direct deposit, by checking the box below in Item 39. You can also request a waiver if you have other circumstances that you feel would cause you a hardship to be enrolled in direct deposit. You can write to: Department of Veterans Affairs, 125 S. Main Street Suite B, Muskogee, OK 74401-7004, and give us a brief description of why you do not wish to participate in direct deposit.

<table>
<thead>
<tr>
<th>39. ACCOUNT NUMBER</th>
<th>40. NAME OF FINANCIAL INSTITUTION</th>
<th>41. ROUTING OR TRANSIT NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Please check the appropriate box and provide the account number, if applicable)</td>
<td>(Please provide the name of the bank where you want your direct deposit to go)</td>
<td>(The first nine numbers located at the bottom left of your check or savings deposit slip)</td>
</tr>
</tbody>
</table>

[Check] CHECKING  
(Account Number)

[Check] SAVINGS  
(Account Number)

☐ I certify that I do not have an account with a financial institution or certified payment agent

YOU MUST SIGN AND PRINT YOUR NAME AND DATE THIS FORM IN ITEMS 42A THRU 42C ON PAGE 10.
PART XII - CERTIFICATION, AUTHORIZATION, AND SIGNATURE(S)

I certify that the statements in this document are true and complete to the best of my knowledge and belief. I authorize any person or entity, including but not limited to any organization, service provider, employer or government agency, to give the Department of Veterans Affairs any information about me except protected health information, and I waive any privilege which makes the information confidential.

IMPORTANT - If you sign with an “X”, then you must have 2 people witness your signature. They must then print their names and addresses and sign the form.

42A. VETERAN’S SIGNATURE (Do not print) (Please sign in ink)  42B. VETERAN’S PRINTED NAME  42C. DATE SIGNED

43A. SIGNATURE OF WITNESS (Do not print)  43B. PRINTED NAME AND ADDRESS OF WITNESS

44A. SIGNATURE OF WITNESS (Do not print)  44B. PRINTED NAME AND ADDRESS OF WITNESS

PART XIII - REMARKS (Use this space for any additional statements that you would like to make concerning your application for Compensation and/or Pension)

45. REMARKS (If you need more space you may attach a separate sheet of paper)

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment to which you are not entitled.

YOU MUST SIGN AND PRINT YOUR NAME AND DATE THIS FORM IN ITEMS 42A THRU 42C ON THIS PAGE.
### Department of Veterans Affairs

**AUTHORIZATION AND CONSENT TO RELEASE INFORMATION TO THE DEPARTMENT OF VETERANS AFFAIRS (VA)**

RESPONDENT BURDEN: We need this information to obtain your treatment records. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 5 minutes to review the instructions, find the information and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#VA. If desired, you can call 1-800-829-4833 to get information on where to send comments or suggestions about this form.

IF YOU HAVE ANY QUESTIONS ABOUT THIS FORM, CALL VA TOLL-FREE AT 1-800-827-1000 (TDD 1-800-829-4833 FOR HEARING IMPAIRED).

<table>
<thead>
<tr>
<th>SECTION I - VETERAN/CLAIMANT IDENTIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print)</td>
</tr>
<tr>
<td>3. CLAIMANT'S NAME (If other than Veteran) LAST NAME, FIRST, MIDDLE</td>
</tr>
<tr>
<td>5. RELATIONSHIP OF CLAIMANT TO VETERAN</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>SECTION II - SOURCE OF INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>7A. LIST THE NAME AND ADDRESS OF THE SOURCE SUCH AS A PHYSICIAN, HOSPITAL, ETC. (Include ZIP Codes, and also a telephone number, if available)</td>
</tr>
<tr>
<td>7C. CONDITION(S) (List illness, injury, etc. pertinent to your claim)</td>
</tr>
<tr>
<td>8. COMMENTS:</td>
</tr>
</tbody>
</table>

YOU MUST SIGN AND DATE THIS FORM ON PAGE 2 AND CHECK THE APPROPRIATE BLOCK IN ITEM 9C.
SECTION III - CONSENT TO RELEASE INFORMATION

READ ALL PARAGRAPHS CAREFULLY BEFORE SIGNING. YOU MUST CHECK THE APPROPRIATE STATEMENT UNDERLINED IN PARENTHESES IN PARAGRAPH 9C.

9A. Privacy Act Notice: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA 21/22/28 Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records -VA, published in the Federal Register. Your obligation to respond is voluntary. However, if the information including your Social Security Number (SSN) is not furnished completely or accurately, the health care provider to which this authorization is addressed may not be able to identify and locate your records, and provided a copy to VA. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect.

9B. I, the undersigned, hereby authorize the hospital, physician or other health care provider or health plan shown in Item 7A to release any information that may have been obtained in connection with a physical, psychological or psychiatric examination or treatment, with the understanding that VA will use this information in determining my eligibility to veterans benefits I have claimed. I understand that the health care provider or health plan identified in Item 7A who is being asked to provide the Veterans Benefits Administration with records under this authorization may not require me to execute this authorization before it will, or will continue to, provide me with treatment, payment for health care, enrollment in a health plan, or eligibility for benefits provided by it. I understand that once my health care provider sends this information to VA under this authorization, the information will no longer be protected by the HIPAA Privacy Rule, but will be protected by the Federal Privacy Act, 5 USC 552a, and VA may disclose this information as authorized by law. I also understand that I may revoke this authorization, at anytime (except to the extent that the health care provider has already released information to VA under this authorization) by notifying the health care provider shown in Item 7A. Please contact the VA Regional Office handling your claim or the Board of Veterans’ Appeals, if an appeal is pending, regarding such action. If you do not revoke this authorization, it will automatically end 180 days from the date you sign and date the form (Item 10C).

9C. I ☐ (AUTHORIZE) ☐ (DO NOT AUTHORIZE) the source shown in Item 7A to release or disclose any information or records relating to the diagnosis, treatment or other therapy for the condition(s) of drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), sickle cell anemia or psychotherapy notes. IF MY CONSENT TO THIS INFORMATION IS LIMITED, THE LIMITATION IS WRITTEN HERE:

________________________________________________________
________________________________________________________

10A. SIGNATURE OF VETERAN/CLAIMANT OR LEGAL REPRESENTATIVE

10B. RELATIONSHIP TO VETERAN/CLAIMANT
   (If other than self, please provide full name, title, organization, city, State and ZIP Code. All court appointments must include docket number, county and State)

10C. DATE

10D. MAILING ADDRESS (Number and Street or rural route, city, or P.O. State and ZIP Code)

10E. TELEPHONE NUMBER (Include Area Code)

The signature and address of a person who either knows the person signing this form or is satisfied as to that person’s identity is requested below. This is not required by VA but may be required by the source of the information.

11A. SIGNATURE OF WITNESS

11B. DATE

11C. MAILING ADDRESS OF WITNESS
### VETERAN'S SUPPLEMENTAL CLAIM FOR COMPENSATION

**Important:** Please read the Privacy Act Notice and Respondent Burden Information below before completing this form.

#### PART I - VETERAN'S IDENTIFYING INFORMATION

1. **NAME OF VETERAN** (First, Middle, Last)
   - [ ]

2. **VETERAN'S SOCIAL SECURITY NUMBER**
   - [ ]

3. **VA FILE NUMBER**
   - [ ]

4. **VETERAN'S ADDRESS** (Number, street or rural route, City or P.O., State and ZIP Code)
   - [ ]

5. **TELEPHONE NUMBER(S)**
   - A. **DAYTIME** (Include Area Code)
   - B. **EVENING** (Include Area Code)

6. **E-MAIL ADDRESS** (If applicable)
   - [ ]

#### PART II - INFORMATION ABOUT CLAIM

7. **I WOULD LIKE TO FILE A CLAIM FOR:** (Check all that apply)
   - [ ] INCREASED EVALUATION OF THE DISABILITY(IES) FOR WHICH I AM ALREADY SERVICE CONNECTED (Provide the name of the disability(ies))
   - [ ] SERVICE CONNECTION FOR NEW DISABILITY(IES) (List your new disability(ies))
   - [ ] REOPENING OF PREVIOUSLY DENIED DISABILITY(IES) (List your previously denied disability(ies))
   - [ ] DISABILITY(IES) SECONDARY TO MY EXISTING SERVICE CONNECTED DISABILITY(IES) (Provide the name of the disability(ies) and your service connected condition(s))

8A. **NAME AND LOCATION OF VA MEDICAL CENTER THAT HAS MY RELEVANT TREATMENT RECORDS**
   - [ ]

8B. **NAME AND ADDRESS OF MILITARY FACILITY THAT HAS MY RELEVANT TREATMENT RECORDS**
   - [ ]

8C. **DO YOU HAVE PRIVATE TREATMENT RECORDS?**
   - YES
   - NO

9. **I WOULD LIKE TO FILE A CLAIM FOR OTHER VA BENEFITS** (Check appropriate box)
   - [ ] ADID AND ATTENDANCE
   - [ ] AUTOMOBILE ALLOWANCE
   - [ ] OTHER (Specify benefit)

10. **I WOULD LIKE TO FILE A CLAIM FOR ADDITIONAL BENEFITS BECAUSE MY SPOUSE IS SERIOUSLY DISABLED** (Please provide spouse's name and social security number in Items 10A & 10B)
    - A. **SPOUSE'S NAME**
    - B. **SPOUSE'S SOCIAL SECURITY NO.**

11A. **VETERAN'S SIGNATURE** (Do NOT print)
    - [ ]

11B. **DATE SIGNED**
    - [ ]

---

**PRIVACY ACT NOTICE:** The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.376 for routine uses (i.e. civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest; the administration of VA programs and delivery of VA benefits; verification of identity and status, and personnel administration) as identified in the VA system of records, SIRVA2122/28 Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. Giving us your SSN account information is mandatory. Applicants are required to provide their SSN under Title 38 USC 5101 (c) (1). The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information that you furnish may be utilized in computer matching programs with other Federal or state agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States.

**RESPONDENT BURDEN:** We need this information to make an eligibility determination for veterans filing supplemental compensation claims (38 U.S.C. 5101). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. The form is available at [www.va.gov/vaforms](http://www.va.gov/vaforms).
Chapter 2—A VA Claim from Beginning to “End”

Handling a VA Service Connected Disability Claim

GENERAL INSTRUCTIONS
FOR APPLICATION FOR DEPENDENCY AND INDEMNITY COMPENSATION, DEATH PENSION AND ACCRUED BENEFITS BY A SURVIVING SPOUSE OR CHILD (INCLUDING DEATH COMPENSATION IF APPLICABLE)

VA FORM 21-534

Note: Read very carefully, detach, and keep these instructions for your reference.

A. How can I contact VA if I have questions?

If you have any questions about this form, how to fill it out, or about VA benefits, contact your nearest VA regional office. You can locate the address of the nearest regional office in your telephone book blue pages under “United States Government, Veterans” or call 1-800-827-1000 (Hearing Impaired TDD line 1-800-829-4833). You may also contact VA by Internet at https://iris.va.gov.

B. What is the purpose of VA Form 21-534?

Use VA Form 21-534 to apply for:

- VA benefits you may be entitled to receive as a surviving spouse or child of a deceased veteran, and
- any money VA owes the veteran but did not pay prior to his/her death (accrued benefits).

If you apply for any one of these benefits, the law requires that we also consider you for the others.

C. What is the purpose of the attached SSA-24 form?

You can apply for Social Security (SS) benefits by using the SSA-24 form attached to this VA Form (see pages 9 and 10). You don’t have to apply if you don’t want to or have already done so. If you do want to apply, fill it out and leave it attached. We will send it to the Social Security Administration for you. They will then contact you.

D. What are dependency and indemnity compensation (DIC) and death pension benefits, and how does VA decide what I will or will not receive?

1. Dependency and indemnity compensation may be payable when:

- a veteran's death occurred in service, or
- a veteran dies of a service-connected disability, or
- in certain circumstances if a veteran rated totally disabled from service-connected disability dies from non-service-connected conditions.

2. Death pension may be payable when:

- the death of a veteran with wartime service is not due to service, and
- income is within applicable limits.

VA pays pension based on the amount of family income and the number of dependent children. This is based on law. VA must include as income all sources that Federal law specifies. If there is no surviving spouse, pension may be payable on behalf of a child or children.

Unless a claim for dependency and indemnity compensation or death pension is filed within one year from the date of the veteran's death, that benefit is not payable from a date earlier than the date the claim is received in the VA.

If it is determined that you are entitled to DIC and death pension, we will pay you whichever benefit entitles you to the most money. Benefit rates and income limits are frequently changed, so it is not possible to keep this information current in these instructions. You can find out what the current income limitations and rates of benefits are by contacting your nearest VA regional office.

E. How do I apply for aid and attendance allowance and/or housebound benefits?

VA may pay a higher rate of DIC or pension to a surviving spouse who is blind, a patient in a nursing home, otherwise needs regular aid and attendance, or who is permanently confined to his or her home because of a disability. If you wish to apply for this benefit, check "Yes" for Item 31.

F. How do I complete my application?

Print all answers clearly. If an answer is "none" or "0," write that. Your answer to every question is important to help us complete your claim. If you do not know the answer, write "unknown." For additional space, use Item 48, "Remarks," or attach a separate sheet, indicating the item number to which the answers apply. Make sure you sign and date this application (Items 44 and 45).

Note: If the claim is being made on behalf of a minor or incompetent person, the application form should be completed and filed by the legal guardian. If no legal guardian has been appointed, it may be completed and filed by some person acting on behalf of the minor or incompetent person.
Chapter 2—A VA Claim from Beginning to “End”

G. What do I do when I have completed my application?

When you have completed this application mail it or take it to a VA regional office. Be sure to attach any materials that support and explain your claim. Also, make a photocopy of your application and everything that you submit to VA before mailing it.

H. How can I assign someone to act as my representative?

A representative can be an accredited member of an accredited organization or other service organization that the Secretary of Veterans Affairs recognizes, an agent recognized by VA, or a licensed lawyer. Agents and attorneys can charge you for services that you get from them only after the Board of Veteran’s Appeals (BVA) gives you their final decision about your application. That means you can use an attorney during any stage of your application for benefits. However, the agent or attorney cannot charge your for services unless you are trying to resolve a dispute with VA after BVA has made a decision about your claim.

If you want to use a representative to help you with your application, contact the nearest VA office. Depending on the type of representative you want to designate, we will send you one of the following forms:

VA Form 21-22, A Appointment of Veterans Service Organization as Claimant’s Representative, or VA Form 22A, A Appointment of Individual as Claimant’s Representative. You may also download these forms at www.va.gov/vaforms. If you have already designated a representative, no further action is required on your part.

I. What if I believe that VA has made an error in processing or deciding my benefits?

You can ask for a personal hearing at any time during the processing of your claim. That means you can ask for the hearing while VA is processing your claim or after VA has made a decision. You should contact the nearest VA office and tell them that you want a personal hearing on your case. Someone in the local VA office will arrange a time and place for your hearing. At this hearing, you can bring witnesses. VA will record whatever you and your witnesses say during the hearing and include it in the official record. VA will furnish the hearing room and officials, and prepare a transcript of the hearing. VA cannot pay your expenses or the expenses of anyone you want to bring with you to the hearing.

VA FORM 21-534, MAR 2009
Chapter 2—A VA Claim from Beginning to "End"

Please read the attached "General Instructions" before you fill out this form.

SECTION I
Tell us what you are applying for and what you and the deceased veteran have applied for

1. Did the veteran ever file a claim with VA? □ YES □ NO (If "Yes," answer Item 2)

2. What is the VA file number?

3. Has the surviving spouse or child ever filed a claim with VA? □ YES □ NO (If "Yes," answer Items 4 through 6)

4. What is the VA file number?

5. What is the name of the person on whose service the claim was filed?

   First       Middle       Last

6. What is your relationship to that person?

7. Are you claiming service connection for cause of death? □ YES □ NO

SECTION II
Tell us about you and the deceased veteran

8. What is the veteran's name?

   First       Middle       Last       Suffix (if applicable)

9. What is the veteran's Social Security number?

10a. Did the veteran serve under another name? □ YES □ NO
     (If "Yes," answer Item 10b)

10b. Please list the other name(s) the veteran served under:

11. What is the veteran's date of birth?

   mo   day    yr

12. What is the veteran's date of death?

   mo   day    yr

13. Was the veteran a former prisoner of war? □ YES □ NO

14. What is your name? (First, Middle, Last Name) □ Surviving Spouse □ Child

15. What is your relationship to the veteran? (check one)

16. What is your address?

   Street address, Rural Route, or P.O. Box Apt. number

   City         State         ZIP Code         Country

17. What are your telephone numbers? (Include Area Code)
   Daytime
   Evening

18. What is your e-mail address?

19. What is your Social Security number?

20. What is your date of birth?

   mo   day    yr
### SECTION III

**Tell us about the veteran's active duty service**

1. Enter complete information for all periods of service. If more space is needed use Item 48 "Remarks.”

2. If the veteran never filed a claim with VA, attach the original DD 214 or a certified copy for each period of service listed. We will return original documents to you.

### SECTION IV

**Tell us about your and the veteran’s marriages**

You must furnish complete information about all marriages of the surviving spouse and the veteran. If you need additional space, please attach a separate sheet of paper providing the requested information.

If you are claiming benefits as the surviving spouse of the veteran you should complete Items 22a through 27. If you are not the surviving spouse, skip to Section V.

### The veteran’s marriages

**22a. How many times was the veteran married?**

<table>
<thead>
<tr>
<th>22b. Date of Marriage (month, day, year)</th>
<th>22c. Place (city/state or country)</th>
<th>22d. To whom married (first, middle initial, last name)</th>
<th>22e. Type of marriage (ceremonial, common-law, proxy, tribal or other)</th>
<th>22f. Date marriage ended (month, day, year)</th>
<th>22g. Place (city/state or country)</th>
<th>22h. How marriage ended (death, divorce)</th>
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</table>

**22i.** If you indicated "other" as type of marriage, please explain.

**22j.** At the time of your marriage to the veteran, were you aware of any reason the marriage might not be legally valid?

☐ YES ☐ NO  If you answered "Yes," please explain.

**23a. How many times were you married?**

<table>
<thead>
<tr>
<th>23c. Date of Marriage (month, day, year)</th>
<th>23d. Place (city/state or country)</th>
<th>23e. To whom married (first, middle initial, last name)</th>
<th>23f. Type of marriage (ceremonial, common-law, proxy, tribal or other)</th>
<th>23g. Date marriage ended (month, day, year)</th>
<th>23h. Place (city/state or country)</th>
<th>23i. How marriage ended (death, divorce)</th>
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**23j.** If you indicated "other" as type of marriage, please explain.
### SECTION IV  Tell us about your and the veteran’s marital history (continued)

24. Was a child born to you and the veteran during your marriage or prior to your marriage?
   - YES □
   - NO □

25. Are you expecting the birth of a child of the veteran?
   - YES □
   - NO □

26. Did you live continuously with the veteran from the date of marriage to the date of his/her death?
   - YES □
   - NO □

   (If ‘No’, answer Item 27)

27. What was the cause of the separation?
   - Give the reason, date(s), and duration of the separation. If the separation was by court order, attach a copy of the order.

### SECTION V  Tell us about the unmarried children of the veteran

**Note:** Skip to Section VI if you are not claiming benefits for any children that meet the following criteria.

VA recognizes the veteran's biological children, adopted children, and stepchildren as dependents. These children must be unmarried and:

- under age 18, or
- at least 18 but under 23 and pursuing an approved course of education, or
- of any age if they became permanently unable to support themselves before reaching age 18.

"Seriously disabled" (Item 29e) means that the child became permanently unable to support himself/herself before reaching age 18. Furnish a statement from an attending physician or other medical evidence which shows the nature and extent of the physical or mental impairment.

**Note to surviving spouse:** If entitlement to DIC is established, a “seriously disabled” child over age 18 is entitled to receive DIC benefits in his or her own right. A veteran’s child who is seriously disabled and over age 18 must submit a separate VA Form 21-534 to apply for benefits.

<table>
<thead>
<tr>
<th>28a. Name of child (First, middle initial, Last)</th>
<th>28b. Date and place of birth (City/State or Country)</th>
<th>28c. Social Security Number</th>
<th>29a. Biological</th>
<th>29b. Adopted</th>
<th>29c. Stepchild</th>
<th>29d. 18 - 23 yrs old and in school</th>
<th>29e. Seriously disabled</th>
<th>29f. Child previously married</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>mo day yr</td>
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</tbody>
</table>

**VA FORM 21-534, MAR 2009**
### SECTION V  Tell us about the unmarried children of the veteran (continued)

**Tell us about the children listed above that don’t live with you.**

<table>
<thead>
<tr>
<th>30a. Name of child (first, middle initial, last)</th>
<th>30b. Child's Complete Address</th>
<th>30c. Name of person the child lives with (if applicable)</th>
<th>30d. Monthly amount you contribute to child's support</th>
</tr>
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<tbody>
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</tbody>
</table>

### SECTION VI  Tell us if you are housebound, in a nursing home or require aid and attendance

If you answered "yes" to Item 31 and are not in a nursing home, submit a statement from your doctor showing the extent of your disabilities. If you are in a nursing home, attach a statement signed by an official of the nursing home showing the date you were admitted to the nursing home, the level of care you receive, the amount you pay out-of-pocket for your care, and whether Medicaid covers all or part of your nursing home costs.

<table>
<thead>
<tr>
<th>31. Are you claiming aid and attendance allowance and/or housebound benefits because you need the regular assistance of another person, are having severe visual problems, or are housebound?</th>
<th>32a. Are you now in a nursing home?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ YES  □ NO (If &quot;No,&quot; skip to section VII)</td>
<td>□ YES  □ NO (If &quot;Yes,&quot; answer Items 32b and 32c also)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>32b. What is the name and complete mailing address of the facility?</th>
<th>32c. Does Medicaid cover all or part of your nursing home costs?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ YES  □ NO (If &quot;No,&quot; answer Item 32d also)</td>
<td>□ YES  □ NO</td>
</tr>
</tbody>
</table>

32d. Have you applied for Medicaid?

□ YES  □ NO
### SECTION VII

**Tell us the net worth of you and your dependents**

Note: If you are filing this application on behalf of a minor or incompetent child of the veteran and you are the child’s custodian, you must report your net worth as well as the net worth of the child for whom benefits are claimed.

<table>
<thead>
<tr>
<th>Source</th>
<th>Surviving spouse or Custodian of children</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td>33a. Cash, bank accounts, certificates of deposit (CDs)</td>
<td>Name: (first, middle initial, last)</td>
<td>Name: (first, middle initial, last)</td>
</tr>
<tr>
<td>33b. IRAs, Keogh Plans, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33c. Stocks, bonds, mutual funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33d. Value of business assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33e. Real property (not your home)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33f. All other property</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SECTION VIII

**Tell us about the income of you and your dependents**

Payments from any source will be counted, unless the law says that they don’t need to be counted. Report all income, and VA will determine any amount that does not count.

Note: If you are filing this application on behalf of a minor of whom you are the custodian, you must report your income as well as the income of each child for whom benefits are claimed.

| | Surviving spouse or Custodian of children | | Child(ren) |
| | Name: (first, middle initial, last) | Name: (first, middle initial, last) | |
| 34a. Have you claimed or are you receiving benefits from the Social Security Administration on your own behalf or on behalf of child(ren) in your custody? | | |
| YES | NO | |
| 34b. Is Social Security based on your own employment? | | |
| YES | NO | |
| 35. Has a surviving spouse or child filed a claim for compensation from the Office of Worker’s Compensation Programs based on the death of the veteran? | | |
| YES | NO | |
| 36. Has a court awarded damages based on the death of the veteran or is a claim or legal action for damages pending? | | |
| YES | NO | |
| 37. Have you claimed or are you receiving Survivor Benefit Plan (SBP) annuity from a service department based on the death of the veteran? | | |
| YES | NO | |
### SECTION VIII Tell us about the income of you and your dependents (continued)

#### Monthly Income - Tell us the income you and your dependents receive every month

<table>
<thead>
<tr>
<th>Source</th>
<th>Surviving spouse or Custodian of children</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name: (first, middle initial, last)</td>
<td>Name: (first, middle initial, last)</td>
</tr>
<tr>
<td>38a. Social Security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38b. U.S. Civil Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38c. U.S. Railroad Retirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38d. Military Retirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38e. Black Lung Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38f. Supplemental Security Income (SSI)/ Public Assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38g. Other income received monthly</td>
<td></td>
<td></td>
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<tr>
<td>(Please write source below:)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Expected income next 12 months - Tell us about other income for you and your dependents

Report expected income for the 12 month period following the veteran's death. If the claim is filed more than one year after the veteran died, report the expected income for the 12 month period from the date you sign this application.

<table>
<thead>
<tr>
<th>Sources of income for the next 12 months</th>
<th>Surviving spouse or Custodian of children</th>
<th>Child(ren)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name: (first, middle initial, last)</td>
<td>Name: (first, middle initial, last)</td>
</tr>
<tr>
<td>39a. Gross wages and salary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39b. Total dividends and interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39c. Other income expected</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Please write source below:)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39d. Other income expected</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Please write source below:)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40a. Amount paid by you</td>
<td>40b. Date Paid</td>
<td>40c. Purpose (Medicare deduction, nursing home costs, burial expenses, etc.)</td>
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<tr>
<td>------------------------</td>
<td>---------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
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<td>mo day yr</td>
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<tr>
<td>$</td>
<td>mo day yr</td>
<td></td>
</tr>
</tbody>
</table>

**SECTION IX**

Tell us about medical, last illness, burial or other unreimbursed expenses

Family medical expenses and certain other expenses actually paid by you may be deductible from your income. Show the amount of any continuing family medical expenses such as the monthly Medicare deduction or nursing home costs you pay. Also, show unreimbursed last illness and burial expenses and educational or vocational rehabilitation expenses you paid. Last illness and burial expenses are unreimbursed amounts paid by you for the veteran's or his/her child's last illness and burial and the veteran's just debts. Educational or vocational rehabilitation expenses are amounts paid for courses of education, including tuition, fees, and materials. **Do not** include any expenses for which you were reimbursed. If you receive reimbursement after you have filed this claim, promptly advise the VA office handling your claim. If more space is needed attach a separate sheet.

**SECTION X**

Give us direct deposit information

All Federal payments beginning January 2, 1999, must be made by electronic funds transfer (EFT) also called Direct Deposit. Please attach a voided personal check or deposit slip or provide the information requested below in Items 41, 42, and 43 to enroll in Direct Deposit. If you do not have a bank account we will give you a waiver from Direct Deposit, just check the box below in Item 41. The Treasury Department is working on making bank accounts available to you. Once these accounts are available, you will be able to decide whether you wish to sign-up for one of the accounts or continue to receive a paper check. You can also request a waiver if you have other circumstances that you feel would cause you a hardship to be enrolled in Direct Deposit. You can write to: Department of Veterans Affairs, 125 S. Main Street Suite B, Muskogee OK 74401-7004, and give us a brief description of why you do not wish to participate in Direct Deposit.

41. Account number (Please check the appropriate box and provide that account number, if applicable)
   - [ ] Checking
   - [ ] Savings
   - [x] I certify that I **do not** have an account with a financial institution or certified payment agent

42. Name of financial institution

43. Routing or transit number

---

VA FORM 21-534, MAR 2009
### SECTION XI

**Give us your signature**

1. Read the box that starts, "I certify and authorize the release of information:"
2. Sign the box that says, "Your signature."
3. If you sign with an "X," then you must have 2 people you know witness you as you sign. They must then sign the form and print their names and addresses also.

<table>
<thead>
<tr>
<th>44. Your signature</th>
<th>45. Today's date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>46a. Signature of witness (If claimant signed above using an &quot;X&quot;)</th>
<th>46b. Printed name and address of witness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>47a. Signature of witness (If claimant signed above using an &quot;X&quot;)</th>
<th>47b. Printed name and address of witness</th>
</tr>
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</table>

### SECTION XII

**Remarks - Use this space for any additional statements that you would like to make concerning your application.**

**IMPORTANT**

Penalty: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment which you are not entitled to.

<table>
<thead>
<tr>
<th>48. Remarks (If you need more space to answer a question or have a comment about a specific item number on this form please identify your answer or statement by the part and item number)</th>
</tr>
</thead>
</table>
### Application for Survivors Benefits

##### SOCIAL SECURITY ADMINISTRATION

**APPLICATION FOR SURVIVORS BENEFITS**

(PAYABLE UNDER TITLE II OF THE SOCIAL SECURITY ACT)

**IMPORTANT - Read instructions before completing form. Detach and retain ONLY the instruction sheet.**

1. **FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN** (Type or print)
2. **DATE OF DEATH**

**NOTE: If the veteran’s Social Security No. is unknown, complete Items 4, 5, 6 and 7 about veteran.**

3. **SOCIAL SECURITY NO. OF VETERAN**
4. **DATE OF BIRTH**
5. **PLACE OF BIRTH**
6. **NAME OF FATHER**
7. **MAIDEN NAME OF MOTHER**
8. **DID THE VETERAN WORK IN THE RAILROAD INDUSTRY AT ANY TIME AFTER 1936?**
   - [ ] YES
   - [ ] NO

**NOTE: The following information should be furnished for each period of the veteran’s active service (regular or reserves) after September 7, 1939, in the military service of the United States or service as a commissioned officer in the Public Health Service or the National Oceanic and Atmospheric Administration or during WWII, Philippine or Filipino or Allied country military service. If additional space is needed, attach a separate sheet.**

9A. **DATE ENTERED ACTIVE SERVICE**
9B. **SERVICE NO.**
9C. **DATE SEPARATED FROM ACTIVE SERVICE**
9D. **GRADE, RANK, OR RATING, ORGANIZATION AND BRANCH OF SERVICE**

10. **RELATIONSHIP OF APPLICANT TO VETERAN**
    - [ ] SURVIVING SPOUSE
    - [ ] CHILD
    - [ ] PARENT

11. **DATE OF BIRTH OF APPLICANT**
12. **VA FILE NO.**
13A. **CHILDREN:** Show names of surviving children (including natural children, adopted children and stepchildren) or dependent grandchildren (including stepgrandchildren) who at any time since the veteran died, were unmarried and (a) under age 18; (b) age 18 to 19 and attending secondary school; (c) disabled or handicapped (18 or over and disability began before age 22).

14. **DATE** (Month, day, year)
15. **SIGNATURE OF APPLICANT** (First name, middle initial, last name) (Sign in ink)
16. **MAILING ADDRESS OF APPLICANT** (No. and street or rural route, city or P.O., State and ZIP Code)
17. **TELEPHONE NO.** (Include Area Code)

**WITNESSES REQUIRED ONLY IF SIGNATURE OF APPLICANT IS MADE BY “X” MARK ABOVE**

18A. **SIGNATURE OF WITNESS**
18B. **ADDRESS OF WITNESS** (No. and street, city, State and ZIP Code)

19A. **SIGNATURE OF WITNESS**
19B. **ADDRESS OF WITNESS** (No. and street, city, State and ZIP Code)

**ITEMS BELOW TO BE COMPLETED BY THE DEPARTMENT OF VETERANS AFFAIRS Use reverse for “Remarks”**

20. **PROOFS RECEIVED**
    - [ ] DEATH
    - [ ] MARRIAGE
    - [ ] AGE
    - [ ] OTHER (Specify) (NAME)
21. **PROOFS REQUESTED FROM CLAIMANT OR OTHER (Specify)**
    - [ ] DEATH
    - [ ] MARRIAGE
    - [ ] AGE
    - [ ] OTHER (Specify) (NAME)

22. **DATE**
23. **NAME AND ADDRESS OF TRANSMITTING VA OFFICE**

---

**Page 9**
INSTRUCTIONS FOR COMPLETING FORM SSA-24, APPLICATION FOR SURVIVORS BENEFITS
(Payable Under Title II of the Social Security Act)

This application form, SSA-24, is an Application for Survivors Benefits Payable under Title II of the Social Security Act, as amended. Under authority of section 202(o) of the Social Security Act, the application requests information in order to determine eligibility to social security benefits.

You do not have to complete this application; there are no penalties under the law if you do not complete part or all of the SSA-24. However, it is usually to your advantage to provide the information because not providing it could prevent an accurate and timely decision on your claim or could result in the loss of some benefits or insurance coverage.

If you do wish to supply the information requested on the SSA-24, this information will be forwarded to the Social Security Administration and used by them to determine whether social security benefits may be payable to surviving dependent(s) of the veteran. Social Security will then contact you regarding any social security benefits payable based on information given on this form.

Please understand that Social Security may, in certain instances, disclose the information on this form to another Federal, State or local agency or individual without your written consent. This would be done in order to:

- enable a third party or an agency to assist Social Security in establishing an individual’s right to benefits or coverage;
- comply with Federal laws which require or authorize the release of information from social security records; and
- facilitate statistical research and audit activities necessary to assure the integrity and improvement of the social security programs.

If you should have any question about entitlement to social security benefits or the information you have provided on this form, please contact your local social security office.

Complete each item of the attached application, Form SSA-24, (except Items 20 through 23). When signed and dated the form SHOULD BE LEFT ATTACHED to your completed

- VA Form21-534, Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation If Applicable) or
- VA Form 21-535, Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation When Applicable).

PAPERWORK REDUCTION ACT: This information collection meets the clearance requirements of 44 U.S.C. 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You are not required to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take you about 15 minutes to read the instructions, gather the necessary facts, and answer the questions.
### DECLARATION OF STATUS OF DEPENDENTS

Privacy Act Information: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 5, Code of Federal Regulations 1.176 for routine uses (i.e., criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs, delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA 21/22/28. Compensation, Pension, Education, and Vocational Rehabilitation Records - VA, and published in the Federal Register. Our obligation to respond is required to obtain or retain benefits. Giving us your and your dependents' SSN account information is mandatory. Applicants are required to provide their SSN and the SSN of any dependents for whom benefits are claimed under Title 38 USC 5101 (c)(1). The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. Information that you furnish may be utilized in computer matching programs with other Federal or state agencies for the purpose of determining your eligibility to receive VA benefits, as well as to collect any amount owed to the United States by virtue of your participation in any benefit program administered by the Department of Veterans Affairs.

RESPONDENT BURDEN: We need this information to determine marital status and eligibility for an additional allowance for dependents under Title 38 United States Code, 1115. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information unless a valid OMB number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/OMBINV.VA.EPA.html#VA. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

INSTRUCTIONS: Print all answers clearly. Make sure you sign and date this form (Items 17 and 18). Note: Unless the claimant is the veteran’s surviving spouse, the veteran must sign in Item 17. When you have completed this form, mail it or take it to a VA regional office.

1A. FIRST - MIDDLE - LAST NAME OF VETERAN  
2A. NAME OF CLAIMANT (If other than veteran)  
3. FILE NUMBER

1B. VETERAN’S SOCIAL SECURITY NUMBER  
2B. CLAIMANT’S SOCIAL SECURITY NUMBER  
2C. SOCIAL SECURITY NUMBER

4A. ADDRESS OF CLAIMANT (No. and street or rural route, city or P.O., State and ZIP Code)  
4B. E-MAIL ADDRESS OF CLAIMANT (If applicable)

5A. MARITAL STATUS  
☐ MARRIED  
☐ WIDOWED  
☐ SEPARATED  
☐ DIVORCED  
☐ NEVER MARRIED *(If checked, skip to Item 14)*

5B. IF MARRIED, SPOUSE’S DATE OF BIRTH  
Place:  
month day year

5C. TO WHOM MARRIED  
(First, middle, last name)

5D. HOW MARRIAGE TERMINATED  
(Death, Divorce)

5E. DATE AND PLACE TERMINATED  
(Place:  
City/State or Country)

SECTION I - VETERAN’S MARRIAGES

6. HOW MANY TIMES HAVE YOU BEEN MARRIED? (Including current marriage)  
7A. DATE AND PLACE OF MARRIAGE  
(Place:  
City/State or Country)

7B. TO WHOM MARRIED  
(First, middle, last name)

7C. SOCIAL SECURITY NUMBER

7D. HOW MARRIAGE TERMINATED  
(Death, Divorce)

7E. DATE AND PLACE TERMINATED  
(Place:  
City/State or Country)

SECTION II - SPOUSE’S PREVIOUS MARRIAGES

8. HOW MANY TIMES HAS THE VETERAN’S CURRENT SPOUSE OR SURVIVING SPOUSE BEEN MARRIED? (Including current marriage)  
9A. DATE AND PLACE OF MARRIAGE  
(Place:  
City/State or Country)

9B. TO WHOM MARRIED  
(First, middle, last name)

9C. SOCIAL SECURITY NUMBER

9D. HOW MARRIAGE TERMINATED  
(Death, Divorce)

9E. DATE AND PLACE TERMINATED  
(Place:  
City/State or Country)

9F. TO WHOM MARRIED  
(First, middle, last name)

9G. HOW MARRIAGE TERMINATED  
(Death, Divorce)

9H. DATE AND PLACE TERMINATED  
(Place:  
City/State or Country)
## Section III - Veteran's Unmarried Children

**Note:** If any child is claimed as "seriously disabled" (Item 14H), it must be shown that the child became permanently unable to support him/herself before reaching age 18. Furnish a statement from an attending physician or other medical evidence which shows the nature and extent of the physical or mental impairment.

**Note:** In Items 14A through 14I, check all boxes that apply.

<table>
<thead>
<tr>
<th>14A. NAME OF CHILD (first, middle initial, last)</th>
<th>14B. DATE AND PLACE OF BIRTH (city, state or country)</th>
<th>14C. SOCIAL SECURITY NUMBER</th>
<th>14D. BIOLOGICAL</th>
<th>14E. ADOPTED</th>
<th>14F. STEP-CHILD</th>
<th>14G. 18-23 YRS. OLD AND IN SCHOOL</th>
<th>14H. SERIOUSLY DISABLED</th>
<th>14I. CHILD PREVIOUSLY MARRIED</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

**Note:** If any of the children listed above don't live with you, complete Items 15A through 15C.

<table>
<thead>
<tr>
<th>15A. NAME OF CHILD (first, middle initial, last)</th>
<th>15B. CHILD'S COMPLETE ADDRESS</th>
<th>15C. NAME OF PERSON THE CHILD LIVES WITH (If applicable)</th>
</tr>
</thead>
<tbody>
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</table>

**16. Remarks**

**I HEREBY CERTIFY THAT** the information I have given above is true and correct to the best of my knowledge and belief.

<table>
<thead>
<tr>
<th>17. SIGNATURE OF CLAIMANT</th>
<th>18. DATE</th>
<th>19. TELEPHONE NUMBER (S) (Include Area Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>A. DAYTIME</td>
</tr>
<tr>
<td></td>
<td></td>
<td>B. NIGHTTIME</td>
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</tbody>
</table>

**PENALTY:** The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment to which you are not entitled.
### VETERAN'S APPLICATION FOR INCREASED COMPENSATION BASED ON UNEMPLOYABILITY

**NOTE:** This is a claim for compensation benefits based on unemployability. When you complete this form you are claiming total disability because of a service-connected disability(ies) which have prevented you from securing or following any substantially gainful occupation. Answer all questions fully and accurately.

Social Security Benefits: Individuals who have a disability and meet medical criteria may qualify for Social Security of Supplemental Security Income disability benefits. If you would like more information about Social Security benefits, contact your nearest Social Security Administration (SSA) office. You can locate the address of the nearest SSA office in your telephone book blue pages under "United States Government, Social Security Administration" or call 1-800-772-1213 (Hearing Impaired TDD line 1-800-325-0778.). You may also contact SSA by Internet at http://www.ssa.gov/.

#### SECTION I - DISABILITY AND MEDICAL TREATMENT

1. VA FILE NUMBER
2. SOCIAL SECURITY NUMBER
3. DATE OF BIRTH
4. EMAIL ADDRESS (if applicable)

5. NAME OF VETERAN (First, Middle, Last) (Type or Print)
6. ADDRESS OF CLAIMANT (No. and street or rural route, city or P.O., State and ZIP Code)

7. WHAT SERVICE-CONNECTED DISABILITY PREVENTS YOU FROM SECURING OR FOLLOWING ANY SUBSTANTIALLY GAINFUL OCCUPATION?
8. HAVE YOU BEEN UNDER A DOCTOR’S CARE AND/OR HOSPITALIZED WITHIN THE PAST 12 MONTHS?
9. DATE(S) OF TREATMENT BY DOCTOR(S)
10. NAME AND ADDRESS OF DOCTOR(S)
11. NAME AND ADDRESS OF HOSPITAL
12. DATE(S) OF HOSPITALIZATION

#### SECTION II - EMPLOYMENT STATEMENT

13. DATE YOUR DISABILITY AFFECTED FULL-TIME EMPLOYMENT
14. DATE YOU LAST WORKED FULL-TIME
15. DATE YOU BECAME TOO DISABLED TO WORK

16A. WHAT IS THE MOST YOU EVER EARNED IN ONE YEAR?
16B. WHAT YEAR?
16C. OCCUPATION DURING THAT YEAR

#### 17. LIST ALL YOUR EMPLOYMENT INCLUDING SELF-EMPLOYMENT FOR THE LAST FIVE YEARS YOU WORKED

<table>
<thead>
<tr>
<th>A. NAME AND ADDRESS OF EMPLOYER</th>
<th>B. TYPE OF WORK</th>
<th>C. HOURS PER WEEK</th>
<th>D. DATES OF EMPLOYMENT FROM TO</th>
<th>E. TIME LOST FROM ILLNESS</th>
<th>F. HIGHEST GROSS EARNINGS PER MONTH</th>
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</table>

G. INDICATE YOUR TOTAL EARNED INCOME FOR THE PAST 12 MONTHS

H. IF PRESENTLY EMPLOYED, INDICATE YOUR CURRENT MONTHLY EARNED INCOME

18. DID YOU LEAVE YOUR LAST JOB/SELF-EMPLOYMENT BECAUSE OF YOUR DISABILITY?
   (If "Yes," give the facts in Item 25)
   YES  NO

19. DO YOU RECEIVE/EXPECT TO RECEIVE DISABILITY RETIREMENT BENEFITS?
   YES  NO

20. DO YOU RECEIVE/EXPECT TO RECEIVE WORKERS COMPENSATION BENEFITS?
   YES  NO

21. HAVE YOU TRIED TO OBTAIN EMPLOYMENT SINCE YOU BECAME TOO DISABLED TO WORK?
   (If "Yes," complete Items A, B, and C)
   YES  NO

<table>
<thead>
<tr>
<th>A. NAME AND ADDRESS OF EMPLOYER</th>
<th>B. TYPE OF WORK</th>
<th>C. DATE APPLIED</th>
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<tbody>
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</table>
### Section III - Schooling and Other Training

<table>
<thead>
<tr>
<th>Grade School</th>
<th>High School</th>
<th>College</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2 3 4 5 6 7 8</td>
<td>1 2 3 4</td>
<td>1 2 3 4</td>
</tr>
</tbody>
</table>

**22. Education**

(Check highest year completed)

**23A. Did you have any other education and training before you were too disabled to work?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>(If &quot;Yes,&quot; complete Items 23B, and 23C)</td>
<td></td>
</tr>
</tbody>
</table>

**23B. Type of Education or Training**

**23C. Dates of Training**

<table>
<thead>
<tr>
<th>Beginning</th>
<th>Completion</th>
</tr>
</thead>
</table>

**24A. Have you had any education and training since you became too disabled to work?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>(If &quot;Yes,&quot; complete Items 24B, and 24C)</td>
<td></td>
</tr>
</tbody>
</table>

**24B. Type of Education or Training**

**24C. Dates of Training**

<table>
<thead>
<tr>
<th>Beginning</th>
<th>Completion</th>
</tr>
</thead>
</table>

**25. Remarks**

---

### Section IV - Authorization, Certification, and Signature

**Authorization for Release of Information:** I authorize the person or entity, including but not limited to any organization, service provider, employer, or Government agency, to give the Department of Veterans Affairs any information about me except protected health information, and I waive any privilege which makes the information confidential.

**Certification of Statements:** I certify that as a result of my service-connected disabilities, I am unable to secure or follow any substantially gainful occupation and that the statements in this application are true and complete to the best of my knowledge and belief. I understand that these statements will be considered in determining my eligibility for VA benefits based on unemployability because of service-connected disability.

I understand that if I am granted service-connected total disability benefits based on my unemployability, I must immediately inform VA if I return to work. I also understand that total disability benefits paid to me after I begin work may be considered an overpayment requiring repayment to VA.

**Witness to Signature of Claimant if Made "X" Mark. Note:** Signature made by mark must be witnessed by two persons to whom the person making the statement is personally known and the signature and address of such witnesses must be shown below.

**Signature of Witness**

**Address of Witness**

**Penalty:** The law provides severe penalties which include fine or imprisonment or both for the willful submission of any statement or evidence of a material fact, knowing it to be false or for the fraudulent acceptance of any payment to which you are not entitled.

**Privacy Act Notice:** VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 38V A 21/22/28, Compensations, Pensions, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. Giving us your SSN account information is mandatory. Applicants are required to provide their SSN under Title 38, U.S.C. 5101(c)(1). VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by a Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits provided under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

**Respondent Burden:** We need this information to determine eligibility for individual unemployment (38 U.S.C., 1163). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 45 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

VA FORM 21-8940, JUN 2011

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**Handling a VA Service Connected Disability Claim**
### APPLICATION FOR ACCREDITATION AS A CLAIMS AGENT OR ATTORNEY

**INSTRUCTIONS:** Please provide the applicable personal and employment data, then read each question and provide complete answers to all questions that apply to you. If additional space is needed, please attach a supplementary page(s). After providing all of the requested information, sign and date your application. Unsigned or incomplete applications will not be processed. Send completed applications to: Department of Veterans Affairs, Office of the General Counsel (022D), 810 Vermont Avenue, N.W., Washington, D.C. 20420. After an affirmative determination of character and fitness for practice before the VA, claims agent applicants must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation. Claims agent applicants will be given written instructions for arranging to take the examination if initial eligibility is established. Attorney applicants must be in good standing with a State bar and are not required to take an examination administered by VA as a prerequisite to accreditation. Denials of initial eligibility for accreditation as a claims agent or attorney are final and are not subject to appeal, but applicants may reapply.

1. **LAST NAME - FIRST NAME - MIDDLE NAME**
2. **HOME ADDRESS (street, city, state, ZIP Code)**
3. **PHONE NUMBER (Including area code)**
4. **E-MAIL ADDRESS (If available)**

3A. **EMPLOYMENT STATUS**
   - [ ] EMPLOYED (Complete Item 3B)
   - [ ] UNEMPLOYED (Skip Item 3B)
   - [ ] SELF-EMPLOYED (Skip Item 3B)
   - [ ] STUDENT (Skip Item 3B)

3B. **WORK ADDRESS (street, city, state, ZIP Code)**

5. **PLACE OF BIRTH (City, State, Country)**
6. **BRANCH OF SERVICE**
7. **CHARACTER OF DISCHARGE**
8. **DATE OF BIRTH (Month, day, year)**
9. **LIST DATES OF ALL ACTIVE MILITARY SERVICE**

9. **EMPLOYMENT** (Provide information for past five years - use additional sheets if necessary)

<table>
<thead>
<tr>
<th>A. EMPLOYER NAME AND ADDRESS (street, city, state, ZIP Code)</th>
<th>B. EMPLOYER PHONE NO. (Include area code)</th>
<th>C. POSITION TITLE</th>
<th>D. EMPLOYMENT DATES (Month/Day/Year)</th>
<th>E. NAME OF SUPERVISOR</th>
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10. **EDUCATION** (Provide information for high school graduation and list all colleges or universities attended and degrees received)

<table>
<thead>
<tr>
<th>A. NAME AND ADDRESS OF INSTITUTION (street, city, state, ZIP Code)</th>
<th>B. DATES ATTENDED (Month/Year)</th>
<th>C. DEGREE RECEIVED/MAJOR</th>
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</table>
### Chapter 2—A VA Claim from Beginning to “End”

#### Handling a VA Service Connected Disability Claim

11A. ARE YOU CURRENTLY A MEMBER IN GOOD STANDING OF THE BAR OF THE HIGHEST COURT OF A STATE OR TERRITORY OF THE UNITED STATES?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</table>

11B. IF “YES,” LIST EACH JURISDICTION IN WHICH ADMITTED, THE DATE OF ADMISSION, AND MEMBERSHIP OR REGISTRATION NUMBER.

<table>
<thead>
<tr>
<th>JURISDICTION IN WHICH ADMITTED</th>
<th>DATE OF ADMISSION</th>
<th>MEMBERSHIP OR REGISTRATION NO.</th>
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12A. ARE YOU CURRENTLY ADMITTED TO PRACTICE BEFORE ANY STATE OR FEDERAL AGENCY OR ANY FEDERAL COURT?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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12B. IF “YES,” LIST EACH AGENCY OR FEDERAL COURT TO WHICH ADMITTED, THE DATE OF ADMISSION, AND MEMBERSHIP OR REGISTRATION NUMBER.

<table>
<thead>
<tr>
<th>AGENCY IN WHICH ADMITTED</th>
<th>DATE OF ADMISSION</th>
<th>MEMBERSHIP OR REGISTRATION NO.</th>
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#### BACKGROUND INFORMATION:

Truthfulness and candor are essential elements of good moral character and reputation relevant to practice before the Department of Veterans Affairs. It is in your best interest, therefore, to provide the Office of the General Counsel with all available information in responding to the questions asked below. For each question answered “YES,” provide a detailed statement setting forth all relevant facts and dates along with copies of relevant documents.

Your responses must be updated as necessary prior to your accreditation. Failure to disclose the requested information may result in denial of accreditation under 38 C.F.R. § 14.629 or in disciplinary proceedings under 38 C.F.R. § 14.633 if you are already accredited.

For questions 13 through 15 your answers should include convictions resulting from a plea of nolo contendere (no contest), but omit:

1. traffic fines of $300 or less,
2. any violation of law committed before your 16th birthday, and
3. any conviction for which the record was expunged under Federal or state law.

13A. HAVE YOU EVER BEEN CONVICTED, IMPRISONED, SENTENCED TO PROBATION OR PAROLE? (Include felonies, firearms or explosives violations, misdemeanors, and all other offenses.)

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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14A. HAVE YOU EVER BEEN CONVICTED, BY A MILITARY COURT-MARTIAL? (If no military service, answer “NO.”)

<table>
<thead>
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<th>YES</th>
<th>NO</th>
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15A. ARE YOU NOW UNDER CHARGES FOR ANY VIOLATION OF LAW?

<table>
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<th>YES</th>
<th>NO</th>
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16. HAVE YOU EVER BEEN SUSPENDED, EXPELLED OR ASKED TO RESIGN OR WITHDRAW FROM ANY EDUCATIONAL INSTITUTION, OR HAVE YOU RESIGNED OR WITHDRAWN FROM ANY SUCH INSTITUTION IN TIME TO AVOID DISCIPLINE, SUSPENSION, OR EXPULSION FOR CONDUCT INVOLVING DISHONESTY, FRAUD, MISREPRESENTATION, OR DECEIT?

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<th>YES</th>
<th>NO</th>
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17. HAVE YOU EVER BEEN DISCIPLINED, REPRIMANDED, SUSPENDED OR TERMINATED IN ANY JOB FOR CONDUCT INVOLVING DISHONESTY, FRAUD, MISREPRESENTATION, DECEIT, OR ANY VIOLATION OF FEDERAL OR STATE LAWS OR REGULATIONS?

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<th>YES</th>
<th>NO</th>
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18. HAVE YOU EVER RESIGNED, RETIRED FROM, OR QUIT A JOB WHEN YOU WERE UNDER INVESTIGATION OR INQUIRY FOR CONDUCT WHICH COULD HAVE BEEN CONSIDERED AS INVOLVING DISHONESTY, FRAUD, MISREPRESENTATION, DECEIT, OR VIOLATION OF FEDERAL OR STATE LAWS OR REGULATIONS, OR AFTER RECEIVING NOTICE OR BEING ADVISED OF POSSIBLE INVESTIGATION, INQUIRY, OR DISCIPLINARY ACTION FOR SUCH CONDUCT?

<table>
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<th>YES</th>
<th>NO</th>
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19. HAVE YOU EVER FUNCTIONED AS A REPRESENTATIVE, AGENT, OR ATTORNEY BEFORE A STATE OR FEDERAL DEPARTMENT OR AGENCY?

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<th>YES</th>
<th>NO</th>
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20. HAVE YOU EVER BEEN REPRIMANDED, SUSPENDED, OR BARRED FROM PRACTICE BEFORE ANY COURT, BAR, OR FEDERAL OR STATE AGENCY, OR HAVE YOU RESIGNED MEMBERSHIP IN THE BAR OF ANY COURT, OR FEDERAL OR STATE AGENCY TO AVOID REPRIMAND, SUSPENSION, OR DISBARMENT FOR CONDUCT INVOLVING DISHONESTY, FRAUD, MISREPRESENTATION, OR DECEIT?

| YES | NO |
---|---|

21. HAVE YOU EVER APPLIED FOR ACCREDITATION BY THE DEPARTMENT OF VETERANS AFFAIRS AS A REPRESENTATIVE OF A VETERANS SERVICE ORGANIZATION, AGENT, OR ATTORNEY?

| YES | NO |
---|---|

22. IF YOU WERE PREVIOUSLY ACCREDITED AS A REPRESENTATIVE OF A VETERANS SERVICE ORGANIZATION, WAS THAT ACCREDITATION TERMINATED OR SUSPENDED AT THE REQUEST OF THE ORGANIZATION?

| YES | NO |
---|---|

23A. DO YOU HAVE ANY CONDITION OR IMPAIRMENT (SUCH AS SUBSTANCE ABUSE, ALCOHOL ABUSE, OR A MENTAL, EMOTIONAL, NERVOUS, OR BEHAVIORAL DISORDER OR CONDITION) THAT IN ANY WAY CURRENTLY AFFECTS, OR, IF UNTREATED OR NOT OTHERWISE ACTIVELY MANAGED, COULD AFFECT YOUR ABILITY TO REPRESENT CLAIMANTS IN A COMPETENT AND PROFESSIONAL MANNER?

| YES | NO |
---|---|

23B. IF YOU ANSWERED "YES," TO ITEM 23A, PLEASE DESCRIBE THE CONDITION OR IMPAIRMENT, AND ANY TREATMENT YOU RECEIVED IN THE PAST YEAR OR RECEIVE NOW. IF YOU HAVE BEEN UNDER THE CARE OR SUPERVISION OF A HEALTH-CARE PROFESSIONAL, SUBMIT A STATEMENT BY THE HEALTH-CARE PROFESSIONAL SPECIFYING YOUR CURRENT DIAGNOSIS, TREATMENT REGIMEN, AND PROGNOSIS, AND ITS BEARING ON YOUR FITNESS TO REPRESENT CLAIMANTS BEFORE THE DEPARTMENT OF VETERANS AFFAIRS.

24A. DO YOU HAVE ANY PHYSICAL LIMITATIONS WHICH WOULD INTERFERE WITH YOUR COMPLETION OF A WRITTEN EXAMINATION ADMINISTERED UNDER THE SUPERVISION OF A VA REGIONAL COUNSEL? (Claims agent applicants only)

| YES | NO |
---|---|

24B. IF "YES," PLEASE STATE THE NATURE OF SUCH LIMITATIONS AND PROVIDE DETAILS OF ANY SPECIAL ACCOMMODATIONS DEEMED NECESSARY.

25. CHARACTER REFERENCES

(Provide the full names, addresses, and current phone numbers of three individuals who are not immediate family members and who have personal knowledge of your character and qualifications to serve as a claims agent or attorney.)

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>PHONE NUMBER (Include area code)</th>
<th>RELATIONSHIP TO APPLICANT</th>
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CERTIFICATION: I CERTIFY THAT the statements and entries on this form are true and correct. (A willfully false statement or certification is a criminal offense and is punishable by law [18 U.S.C. 1001]).

SIGNATURE OF APPLICANT  DATE SIGNED
Chapter 2—A VA Claim from Beginning to “End”

VA Claim From Beginning to End

SARA K. HILL
HILL & PONTON, P.A.
SKHILL@HILLANDPONTON.COM

Veterans Benefits Manual

- Your go-to-all-the-time resource
- Available as hard copy & CD
- The CD also includes the Federal Veterans Laws, Rules & Regulations
Accreditation

First and foremost -

In order to represent VA claimants before the VA and the Board of Veterans’ Appeals (BVA), you must be accredited by the VA

Form 21a

Regional Office (RO or VARO)

Any VA-accredited practitioner can practice at any RO

A veteran’s RO is almost always nearest their home – if a vet moves, their file should move as well

Exceptions:
- DIC claims/appeals: Pension Management Center
- Sometimes claims are handed to less-busy ROs
- Appeals Management Center (AMC) in Washington, D.C.
- Paperless initiative offices
- STAR
- Tiger Team
Regional Offices

Original Claim

- VA form 21-526
- Preface: generally seeing this in Cfile, rather than completing them with vet
- Must be completed to receive benefits (substantially complete is OK at first)
- Look at the conditions listed by the vet

Preface: generally seeing this in Cfile, rather than completing them with vet

Must be completed to receive benefits (substantially complete is OK at first)

Look at the conditions listed by the vet
Subsequent Claims

Types of subsequent claims:
- New disability
- Increased rating
- Secondary condition
- Request to reopen prior claim
- TDIU
- Survivors benefits
- Changing dependents
- Special Monthly Compensation (SMC)
- All other claims

Subsequent Claims (continued)

File subsequent claims via:
- Supplemental claim form (21-526b)
- Informal claim
- Letter
- Statement in Support of Claim (21-4138) – catchall
- Specific forms:
  - TDIU (21-8940)
  - Survivors claims
    - DIC/Accrued Benefits (21-534)
    - Substitution (21-0847)
Total Disability based on Individual Unemployability (TDIU) Form 21-8940

- *easiest way to 100% compensation rate
- This form has to be on file—otherwise, VA will not pay benefits for TDIU
- Great source of information when reviewing Cfile for veteran’s employment history
- IF TDIU is granted, use this to verify correct effective date

Survivors’ Claims

- VA Form 21-534
  - Dependency & Indemnity Compensation (DIC) → benefits to survivors of veterans whose deaths were service connected
  - Accrued Benefits → paid when
    - Pending claim at time of claimant’s death & VA subsequently awards (here, no additional evidence can be submitted posthumously)
    - Vet was entitled to benefits under existing VA rating or decision, but didn’t receive those benefits prior to death
Survivors’ Claims (continued)

- VA Form 21-0847
  - Substitution of claimant upon claimant’s death
    - Big advantage over claims for accrued benefits
      - substitute claimant can submit additional evidence to support claim

Teacher Break

- “Turn to your neighbor and say three ways to make 10”
  - 2+8
  - 4+6
  - 9+1
Regional Office Practice

- Claimant files claim with RO (check)
- Now, we’ll deal with these practices with the RO:
  - VCAA letter/development letters
  - Rating Decision (RD)
  - Notice of Disagreement (NOD)
  - Attorney Representation/ Client Intake Documents
  - Claims file
  - NOD Acknowledgment/ DRO vs. Traditional Review
  - C&P Exam Reports
  - Argument/ Evidence to DRO
  - Statement of the Case (SOC)
  - Supplemental Statement of the Case (SSOC)

Veterans Claims Assistance Act (VCAA)

VA’s Duty to provide Notice

- VA has a duty to notify claimants of necessary information or evidence. VA is required to inform the claimant:
  - What information or evidence is necessary to substantiate the claim
  - Which portion of that information or evidence the claimant is to provide
  - Which portion of that information or evidence the VA will attempt to obtain
  - That the claimant may submit any other evidence in their possession that may be relevant to the claim
  - About disability ratings
  - About effective dates
Veterans Claims Assistance Act (VCAA)
VA's Duty to Assist

- VA has a duty to assist claimants in obtaining evidence. The VA should get:
  - Service medical records and any other records (SRs) pertaining to the claimant’s active service that are held or maintained by a governmental entity
  - Medical treatment or examination reports at VA health-care facilities
  - Any other items held by any Federal department or agency that the claimant adequately identifies and authorizes VA to obtain.
  - C&P Exam when necessary

Compensation & Pension (C&P)Exams

- These are examinations ordered by the VA’s benefits branch to gain more information regarding the
  - Are not part of the VA’s health administration
  - Sometimes contracted out to other disability examinations services, such as QTC
  - Disability Benefits Questionnaire (DBQ)
Rating Decision

- Grant or deny claims for
  - Service-connection
  - Increased ratings
  - Survivors’ benefits

- Set effective date(s) for compensation—usually the date the VA received the claim

- Assign rating percentage(s) for conditions

- May defer some claims

Notice of Disagreement (NOD)

- This is the appeal to the Rating Decision
- File it within 1 year of RD notice letter
- It triggers your right to get paid (most cases)
- Must state that vet desires appellate review
- Keep it tidy: explain what you disagree with and why
- Check the EDs and rating percentages
- If you do not have the Cfile, but need to file a NOD, submit a broad NOD & explain that you will clarify as soon as possible
Client Intake Documents to send to the VA

- Fee Agreement
  - File with the OGC → FeeAgreements.OGC@VA.gov
    - Must do this, whether fee agreement is withholding or non-withholding.
  - If it is a withholding fee agreement, you must also file it with the Regional Office – recommend sending via CMRR and faxing
  - Must be filed within 30 days of signing

- Appointment of Individual as Claimant’s Representative (VA form 21-22a)
  - File with the Regional Office and BVA

Client Intake Documents to send to VA (cont)

- Authorization to Disclose Personal Information to a Third Party (21-0845)
- Request for and Authorization to Release Medical Records or Health Information (10-5345)
- Declaration of Status of Dependents (21-686c)
- Case-specific forms (Statement, TDIU . . .)
- Anything else?
Requests to send to VA

- Claims File Request
- Medical Records Request
- NPRC Request

Tips for Corresponding with the RO

- “Help me, help you”
  - Address it to the appropriate department
  - Use Reply Reference code from latest correspondence, if applicable.
  - Identify the Claimant and provide the claim number at the very beginning of your correspondence, as a heading
  - Make it obvious what you are submitting/requesting - use bolded/underlined text (ie: Request for Copy of Claims File)
  - Enclose fee agreement, 21-22a, and any other forms.
- Send it CMRRR and/or fax it
- When written correspondence is not working, or you need to speak with someone directly:
  - call RO employees, DROs, Attorney Fee Coordinators, Appeals Team
  - Email
Oh, the Cfile. .

- Cleaning messy room is to kids as . . .

- . . . reading the Cfile is to practitioners.
  - No logical order
  - Usually not a manageable size
  - Pages upside-down, backward, or both
  - Not all legible, especially old service medical records
  - Missing pages & lots of duplicates
Tips for Managing the Cfile

- Do what works for you → scan if possible
- Some say keep it in order for important date stamps, etc.
- Organize & label it: decisions, evidence/medical (service, VA, private), correspondence (to & from VA), jurisdictional documents (claims, appeals); DD-214, etc
- Set aside or ignore irrelevant stuff
- Make a timeline
- Study the medical
- Be on the lookout for golden tickets, red herrings, & needles in the haystack
- Flag important pages to send to the VA

NOD Acknowledgement – what do you do now?

- VA will send letter acknowledging your NOD
- What is the next step? You decide:
  - A) Review by a Decision Review Officer (DRO)
    - DRO is a supervisor on the appeals team
    - Reviews appeals & issues new decision
    - You can request formal or informal hearing, or sometimes a phone conference
  - B) Traditional Appeal Process (Traditional Review)
    - skips the DRO and puts the file on track for the BVA to handle appeal
DRO vs. Traditional Review

- **Decision Review Officer Review**
  - Chance to make it right
  - Another bite at the apple before the BVA
  - Given them something new to help change prior decision

- **Traditional Review**
  - Skips DRO process & puts file on track for he BVA to handle

---

DRO vs. Traditional Review – matter of choice

- **Your choice depends on**
  - Issues in the case
  - Timing
  - Preference based on DRO history
If you choose DRO review...

- Send argument letter, but keep it nice
- Submit additional evidence

Argument to the DRO

- Know your audience
- Don't bother with a lot of case or reg cites
- Keep their attention -- use tabs, bold type, underlining, bullets, etc
- Attach/enclose copies of what they need to see
- Use colorful tabs
- Organize it for them:
  - Ducks in a row
  - Connect the dots
  - Show & tell
Evidence to Highlight & Submit to the DRO

- Service Medical Records (SMRs)
- VA Medical records
- C&P exam reports (although they should have them)
- Private medical records
- Independent medical exam reports/opinions
- Lay statements
- Medical research
- Personnel records
- Unit histories

Statement of the Case (SOC)

- A lot of junk, but some good stuff, too
- Full of boilerplate, cut/paste recitations of the law that may/may not be applicable
- Most important info:
  - First few pages
    - Issues, evidence & timeline
  - Last few pages
    - Decision & explanation
Statement of the Case (continued)

- DING, DING, DING!
- DEADLINE!

Statement of the Case Means Deadline

- Deadline to file formal appeal (VA Form 9) to BVA either:
  - One year from the RD notice letter
    - OR
  - 60 days from the date of the SOC notice letter
- Just be safe & file asap
Supplemental Statement of the Case (SSOC)

- Comes to you after SOC, or after BVA remands
- Usually much shorter than SOCs
- Addresses new evidence and/or argument
- Optional 30-day response time to submit additional evidence/comments → Always respond!

Board of Veterans’ Appeals (BVA)

- VA Form 9 (formal appeal)
- **NOD initiates appeal, the Form 9 completes it**
- Again, must be filed within deadline:
  - Within 60 days of SOC notice;
  - or
  - Within year of RD notice
- File will sit at the RO forever before being sent to the BVA in D.C.
BVA Hearing: to be, or not to be?

- **Pros:**
  - May humanize a claim number
  - Some statistics say it improves chances of winning
- **Con:**
  - Can take a long time to get one (either DRO or BVA)
- ***Considerations:**
  - A good brief alone, for a DRO or later for BVA, can get the job done very well
  - Weigh time cost against the potential benefit
  - Can’t hurt request one, then withdraw request later

Good things to know about BVA

- **Waiver of Agency of Original Jurisdiction (AOJ)**
  - When you have a Board hearing or submit additional evidence at the Board level, you should waive RO review of that evidence, unless you have a good reason not to.

- **90 day letter**
  - They can make a decision prior to the expiration of 90 days!
  - Be sure to ask for the full 90 days asap, unless you don’t need the time
  - Don’t send anything to the BVA until you know the file is in D.C.
Docking Notice

- After the 90-day letter → Cfile transferred to the BVA → given official assignment of a docket date and disposition.
- We receive notice

Brief to the BVA

- No specific format is required.
- Keep it simple and to the point.
- You can use a little more law at this level.
- Draw them a picture.
- Give them what they need to make it right.
- Make the decision easy for them.
BVA Decision

- If they grant the relief, you finally win!
- If they remand to the RO for more development → still a win! Just back in the hamster wheel

When you win at the BVA...

- File goes back to RO to implement the decision
  - If BVA only grants s/c and does not address rating and/or effective date, RO will still need to assign those
    - For ratings, that may often mean new C&P exam
  - RO will issue new RD and administrative decision re: attorney fee
    - Fee Decision
      - If VA withholds, fee is calculated based on date of decision, not the date they actually pay
      - $100 “service charge”
      - Make sure it’s right → NOD for these must be filed with 60 days*
Getting Paid

- Due Process Waiver
  - If you don’t file this after your fee decision, it can take another 60 days for them to pay you

- Vendor Form:
  - Get it from the Attorney Fee Coordinator (AFC)
    → there is one AFC for each RO you deal with

BVA Decision – if they deny...

- Consider appealing to the CAVC to try again for a piece of the pie:
Questions?
Chapter 3

Ethical Pitfalls in CAVC Practice—Presentation Slides

Richard “Gregg” Maxon
Maxon Cutts PLLC
Tempe, Arizona
Applicable Ethics Rules

• Attorneys practicing before CAVC must comply with the ABA Model Rules, which may differ from the ethics rules in their respective states of practice.
  • Practice Pointer: Follow the more stringent rule.
Applicable Ethics Rules

- In addition to the ABA Model Rules, Attorneys also should refer to:
  - CAVC Rules of Practice and Procedure ("P&P Rules")
  - CAVC E-Filing Rules
  - CAVC Rules of Admission and Practice ("A&P Rules")

Grievances Brought Before CAVC

- Between 2006 and 2011, 49 grievances involving 42 members of the CAVC bar were brought before CAVC.
  - Grievances involved both private attorneys and VA attorneys.
  - Not all grievances resulted in discipline.
  - Discipline included private admonitions, public reprimands, suspensions, and disbarments.
Categories of Grievances

- Grievances were brought in the following categories:
  - Communication
  - Competence
  - Fees
  - Privileged Communications
  - Professionalism
  - Supervisor Responsibilities

Communication

- Communicating with Prospective Clients
  - Envelopes containing solicitation letters should be labeled as “advertising materials.” Model Rule 7.3(c).
  - Lawyers should communicate with prospective clients after soliciting them and inform them whether or not they will accept the representation.
  - Practice Pointer: Form letters declining representation.
Communication

• Communicating with Current Clients
  • Attorneys should consistently communicate with clients about case status. Model Rule 1.4.
    • Practice Pointer: Include a clear communication policy in your representation letter and follow it.
  • Do not mislead clients about case status.
  • Promptly alert CAVC and opposing counsel when a client has died. P&P Rule 43(a)(2); ABA Formal Opinion 95-397, Model Rules 1.1, 3.3(a)(1), 4.1.

Competence

• File all required documents timely and in a manner compliant with CAVC rules. Model Rules 1.1, 1.3, 3.2, 8.4(d).
  • Computer problems are not a valid excuse for missed, late, or non-compliant filings.
  • Failing to respond to CAVC orders may violate A&P Rule 4(b)(2) and/or Model Rules 1.1, 1.3, and 8.4.
Competence

• Attorneys have been disciplined for:
  • Failing to respond to multiple show cause orders.
  • Filing multiple late or non-compliant briefs.
  • Failing to file EAJA application responses.
  • Failing to file required documents and respond to CAVC orders, resulting in case dismissal.
  • Repeatedly failing to comply with deadlines.

Competence

• File professional quality briefs that:
  • Comply with CAVC rules.
  • Do not rely on frivolous arguments.
  • Are coherent and logical.
  • Do not cut and paste long block cites as a substitute for analysis.
  • Do not contain numerous typographical errors.
  • Do not file frivolous motions.
Fees

- Do not claim EAJA fees for post-mortem “conversations” with clients. Model Rules 1.1, 3.3, 5.3(b).
  - Yes, this has happened. Multiple times.
  - CAVC has imposed financial penalties on attorneys in addition to requiring the return of any EAJA fees paid for such “conversations”.
  - Practice Pointer: Review EAJA applications carefully before submittal. Do not delegate final review.

Privileged Communications

- Do not post confidential information about a client’s case on the internet, including blogs and social media. Model Rule 1.6.
  - An attorney was found to have violated Model Rule 1.6 by posting information about a former client’s case on a blog even though the client previously gave a newspaper interview about the case.
  - Practice Pointer: Don’t talk about clients on Facebook.
Professionalism

• Attorneys must notify CAVC of the loss of good standing in their state bar.
  • Failure to do so may constitute an additional, independent ethical violation.
• Continuing to practice before CAVC without notifying CAVC of a suspension or disbarment may violate Model Rule 5.5 as unauthorized practice of law.
• CAVC will impose reciprocal discipline.

Supervisor Responsibility

• Supervising attorneys are required to take reasonable steps to insure that their subordinates, including attorneys and staff, comply with CAVC rules and the Model Rules. Model Rules 5.1(c)(2) and 5.3.
• **The buck stops with you:** Supervising attorneys can – and should expect to – be held responsible for a subordinate’s failure to comply with the rules.
Interactive Hypotheticals

• You filed a statement in support of a notice of disagreement for your client six (6) months ago. You have yet to hear anything from the VA. Your client is a 71 year old Vietnam veteran with PTSD, Type 2 Diabetes, and Ischemic Heart Disease. What are your communication responsibilities?

Interactive Hypotheticals

• You have agreed to represent a Vietnam veteran in appealing his PTSD rating. In reviewing the file, you notice that the veteran has Ischemic Heart Disease (“IHD”) but has not filed a claim. If the veteran files a claim for IHD, it will greatly reduce your compensation in any successful PTSD rating appeal. Do you have a duty to tell the client about his IHD claim?
Interactive Hypotheticals

- You represent an OEF-OIF veteran with severe PTSD and TBI in an increased rating appeal. The client is frustrated with how long it is taking the VA to adjudicate his claim, and he calls you daily – sometimes while intoxicated – to complain. He is often belligerent. Can you terminate the representation? Can you make continued representation contingent on the client seeking VA substance abuse treatment?

Contact Information

Richard (Gregg) Maxon, Esq.
Maxon Cutts, PLLC
1050 E. Southern Ave., Suite G-3
Tempe, Arizona 85282
T (480) 838-6566
F (480) 838-8810
maxon@maxoncuts.com
Chapter 4

Entitlement to Service Connected Disability Compensation

SARA KATHRYN HILL
Hill & Ponton PA
Daytona Beach, Florida

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Entitlement to Service Connected Disability Compensation

1) Statutory Scope of service connected disability
   a) 38 U.S.C. § 1110--

   For disability resulting from personal injury suffered or disease contracted in line of
duty, or for aggravation of a preexisting injury suffered or disease contracted in line of
duty, in the active military, naval, or air service, during a period of war, the United
States will pay to any veteran thus disabled and who was discharged or released under
conditions other than dishonorable from the period of service in which said injury or
disease was incurred, or preexisting injury or disease was aggravated, compensation as
provided in this subchapter [38 USCS 1110 et seq.], but no compensation shall be paid if
the disability is a result of the veteran's own willful misconduct or abuse of alcohol or
drugs.

2) Qualifying for service connected disability
   a) Discharge-- must be 'under conditions other than dishonorable' 38 U.S.C. §101 38 C.F.R.
      § 3.12

      i) Military has several types of discharges

         (1) Honorable discharge (HD)

         (2) Discharge under honorable conditions (UHC) or general discharge (GD)

         (3) Discharge under other than honorable conditions (OTH) or undesirable
discharge (UD)

         (4) Bad conduct discharge (BCD)

         (5) Dishonorable discharge (DD)

      ii) Generally if a vet has a HD, UHC, or GD he will be eligible for VA benefits

      iii) If a vet has a OTH, UD, BCD, or DD then the VA will first adjudicate the issue of
character of service

      iv) There is no minimum active duty service requirement for service connected

      v) Multiple periods of service
(1) If vet has multiple periods of service a dishonorable discharge for one period of service will not bar benefits that the veteran seeks for any period of service for which the vet had an honorable discharge

(a) This rule does not apply where the vet has been found guilty of treason, munition, spying, rebellion, subversive activities, or sabotage. 38 U.S.C. § 6104; 6105

b) Active service requirements — defined in 38 U.S.C. § 101 and 38 C.F.R. §3.6

i) Definition of Active Duty in 38 U.S.C. § 101 (21)

(1) (A) full-time duty in the Armed Forces, other than active duty for training;

(2) (B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits" or (iii) at any time, for the purposes of chapter 13 of this title [38 USCS 1301 et seq.];

(3) (C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (I) while on transfer to one of the Armed Forces, or (II) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (III) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title [38 USCS 1301 et seq.];

(4) (D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(5) (E) authorized travel to or from such duty or service.

ii) Scope of the terms “active military, naval, or air service,” pursuant to 38 U.S.C. § 101 (24):

(1) (A) active duty;
(2) (B) any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and
(3) (C) any period of inactive duty training during which the individual concerned was disabled or died--
(a) (i) from an injury incurred or aggravated in line of duty; or
(b) (ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

iii) Two definitions to pay attention to are ‘Active Duty for Training’ and ‘Inactive Duty for Training’. The definitions for each can be found in 38 U.S.C. § 101 (22 & 23)


c) Line of Duty (LOD) determination 38 C.F.R. § 3.1 (m)

i) Definition: In line of duty means an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs. A service department finding that injury, disease or death occurred in line of duty will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs. Requirements as to line of duty are not met if at the time the injury was suffered or disease contracted the veteran was:

(1) Avoiding duty by desertion, or was absent without leave which materially interfered with the performance of military duty.

(2) Confined under a sentence of court-martial involving an unremitted dishonorable discharge.

(3) Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the person was convicted by such court.

(4) See also § 3.301(a)

ii) When reviewing C files you will see in the service records references to LOD determinations—remember when there is a LOD determination in your favor this is binding on the VA

d) Willful Misconduct 38 C.F.R. § 3.1 (n)

i) Definition: Willful misconduct means an act involving conscious wrongdoing or known prohibited action. A service department finding that injury, disease or death was not due to misconduct will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the facts and the requirements of laws administered by the Department of Veterans Affairs.
(1) It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(2) Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.

(3) Willful misconduct will not be determinative unless it is the proximate cause of injury, disease or death. (See §§3.301, 3.302.)

ii) Most common examples of willful misconduct are alcohol abuse and drug abuse. See 3.301(c)

e) 38 U.S.C. 105(a) creates a presumption that an injury was in the line of duty and not willful misconduct. Holton v. Shinseki, 557 F.3d 1362 (2009)

3) Direct service connection 38 U.S.C. § 1110 and 38 C.F.R. § 3.303

a) Incident in service

i) Facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service. . . . Each disabling condition shown by a veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. 38 C.F.R 3.303(a)

(1) Scope of incurred coincident with service: “veteran need not show that his injury occurred while he was performing service-related duties or acting within the course and scope of his employment in order to receive disability benefits; for purposes of disability compensation, a service member’s workday never ends.” Holton, 557 F.3d 1362, 1366 (2009).

(2) Must show that it is ‘at least as likely as not’ that something happened in service

ii) Evidence to prove this element: Service medical records, service records, buddy statements, statements from the vet, unit records. Evidence that collaborates what the veteran describes as the basis of the places, types and circumstances of his service

(1) Combat- special exception 38 U.S.C. 1154(b); 38 C.F.R. § 3.304(d)

iii) Examples—a diagnosis of a disease, symptoms of a disease, a bad landing in a parachute, witnessing a traumatic event, etc.
b) Current disability
   
i) Must currently be suffering from a disability
   
ii) Pain is not a disability
   
iii) Exposure to a harmful substance (e.g. Agent Orange and Asbestos)

   (1) Exposure alone is not a disability. The veteran must have developed a current
disability as a result of that exposure

c) Nexus—a link between the event in service and the current diagnosis
   
i) Bridge

   (1) The longer the time between discharge and a claim the more the VA will
scrutinize if there is an intervening cause to the veteran’s current disability.

   ii) Medical evidence that the current condition is ‘as likely as not related to’ an in-
service event/injury/disease

      (1) Medical opinions can be provided through the VA (known as compensation &
pension exams) or through a private medical provider.

      (2) When the VA is obligated to provide a medical exam—see McLendon v. Nicholson,

      (3) What an independent medical exam or a VA exam must account for—see Nieves-

   iii) Jandreau 492 F.3d 1372 (2007)

      (1) Layperson is competent to identify the medical condition;

      (2) Layperson is reporting a contemporaneous medical diagnosis; or

      (3) Lay testimony describing symptoms at the time supports a later diagnosis by a
medical professional

4) Presumptive Service connection—nexus is conceded
   
a) Chronic disability noted in service—38 C.F.R. § 3.303(b)

   i) There is a list of diseases deemed chronic found in 38 U.S.C. § 1101 (3)

   ii) If one of these diseases manifests in service a subsequent manifestation—no matter
how remote in time—will be service connected.
b) Chronic disability manifesting within presumptive period—38 C.F.R. §§ 3.303(b), 3.307(a)(1), 3.309(a)

i) The disease must become manifest to a degree of 10 percent or more within 1 year (the presumptive period is longer for certain diseases like MS or TB) from date of separation

c) Manifestation defined-- No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. 3.307(c)

d) AO related disease-- 38 C.F.R. §§ 3.307(a)(6), 3.309(e)

i) Requires the vet to have had ‘boots on the ground’ in the Republic of South Vietnam between 1962 to 1975. Multiple exceptions as to where AO was sprayed. Latest is Thailand during Vietnam war. See VA May 2010 Service Bulletin.

(1) See Haas decision regarding Blue water sailors

(2) If the veteran can show that he was on a ship that was on an inland waterway or ‘brown water’ in Vietnam, then he gets the presumption of exposure to Agent Orange. Here is a website that lists a lot of the histories of military vessels: http://www.history.navy.mil/danfs/index.html

ii) That the veteran develops one of the diseases listed 3.309(e)

e) SW Asia undiagnosed illness 38 C.F.R. § 3.317

i) The requirements

(1) Veteran must have qualifying service in the Persian Gulf during the requisite time period

(a) The ‘Persian Gulf’ is the Southwest Asia theater of operations which includes: Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.
(b) The time period of service in the region is August 2, 1990 through the present (VA has not closed this period yet) §3.2

(2) Veteran must suffer from a qualifying chronic disability—of unknown origin—, which is one of three types

(a) An undiagnosed illness

   (i) Diseases must have ‘objective indications of chronic disabilities’ listed in § 3.317(b)

(b) Medically unexplained chronic multisymptom illness

   (i) Chronic Fatigue syndrome

   (ii) Fibromyalgia

   (iii) Irritable bowel syndrome

(3) The disease must manifest to degree of 10% or more by 12/31/11

f) Presumptive service connection for ALS §3.318

g) Presumption of soundness 38 U.S.C. 1111; 38 C.F.R. §§ 3.303(c); 3.304(b)

   i) Presumption of soundness. The veteran will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service. Only such conditions as are recorded in examination reports are to be considered as noted.

   ii) Once the presumption of soundness attaches, it is the VA’s burden to rebut the presumption. See Quirin v. Shineski, 22 Vet. App. 390, 396 (2009); 38 U.S.C. § 1111.

   iii) To rebut such presumption, the VA must show, by clear and unmistakable evidence, both that the disease or disability existed prior to service and that it was not aggravated by service. See Quirin, 22 Vet. App. at 396. To satisfy the second requirement, the VA “must rebut a statutory presumption of aggravation by showing, by clear and unmistakable evidence (CUE), either that (1) there was no increase in disability during service, or (2) any increase in disability was ‘due to the natural progression’ of the condition.” Joyce v. Nicholson, 443 F.3d 845, 847 (Fed. Cir. 2006) (citing Wagner v. Principi, 370 F.3d 1089, 1096 (Fed. Cir. 2004)).
Chapter 4—Entitlement to Service Connected Disability Compensation

i) The standard of proof for rebutting the presumption of soundness is not merely evidence that is cogent and compelling, i.e., a sufficient showing, but evidence that is clear and unmistakable, i.e., undebatable .... [and] the question is not whether the Secretary has sustained a burden of producing evidence, but whether the evidence as a whole, clearly and unmistakably demonstrates that the injury or disease existed prior to service. Cotant, 17 Vet. App. at 132, (citing Vanerson v. West, 12 Vet. App. 254, 261 (1999)).


i) A pre-existing injury or disease will be considered to have been aggravated by active military, naval or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease. 3.306(a)

ii) If a disability is noted on veteran’s entrance exam and the disability increases in severity while the veteran is in service then the veteran is entitled the presumption and only clear and unmistakable evidence (CUE) can overcome this presumption.

iii) Note: there must be evidence that the disability increased in severity.

iv) Common VA error: finding that the disability did not permanently increase in severity due to aggravation.

v) Jenson v. Brown, 19 F.3d 1413

i) Rebuttal of a presumption 38 C.F.R. § 3.307(d)

i) Evidence which may be considered in rebuttal of service incurrence of a disease listed in §3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression “affirmative evidence to the contrary” will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service.

ii) Mariano 17 Vet. App. 305—VA cannot develop evidence solely to deny a case

5) PTSD direct or presumptive service connection?

a) PTSD is the only mental illness to have its own regulation

i) 38 C.F.R. § 3.304(f)
b) It can be both presumptively and directly service connected 

c) With PTSD the in-service incident one must show is a stressor 

d) Evidence of a stressor will be presumed when: 

i) When the veteran was diagnosed with PTSD in service. 

ii) When the veteran’s stressor was related to combat and there is proof that veteran served in combat (i.e. he received a combat medal like the Bronze Star) 

iii) When the veteran met the definition of POW, under 3.1(y), and his PTSD relates to being a POW 

iv) When a VA doctor determines that veteran’s PTSD relates to the ‘veteran’s fear of hostile military or terrorist activity.’ Note VA’s definition of ‘hostile military or terrorist activity.

(1) that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psychophysiological state of fear, helplessness, or horror. 

v) PTSD due to in-service personal assault 

(1) Military Sexual Trauma (MST) misnomer 

(a) This regulation does not apply just to instances of sexual assault or rape but to any in service assault 

(2) Although not a presumption VA has significantly reduced the burden on the veteran for these cases 

vi) PTSD based on evidence of direct service connection 

(1) Veteran has the burden of producing proof of the stressor—service records, service medical records, buddy statements, newspaper articles etc. 

vii) PTSD due to in-service personal assault 

(1) Military Sexual Trauma (MST) misnomer 

(a) This regulation does not apply just to instances of sexual assault or rape but to any in service assault 

(2) Although not a presumption VA has significantly reduced the burden on the veteran for these cases
§ 3.303 Principles relating to service connection.

(a) General. Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

(b) Chronicity and continuity. With chronic disease shown as such in service (or within the presumptive period under §3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clearcut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word "Chronic." When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

(c) Preservice disabilities noted in service. There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorhoidal tags or tabs, etc.) with no evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close thereto that the disease could not have originated in so short a period will establish preservice existence thereof. Conditions of an infectious nature are to be considered with regard to the circumstances of the infection and if manifested in less than the respective incubation periods after reporting for duty, they will be held to have preexisted service. In the field of mental disorders, personality disorders which are characterized by developmental defects or pathological trends in the personality structure manifested by a lifelong pattern of action or behavior, chronic psychoneurosis of long duration or other psychiatric symptomatology shown to have existed
prior to service with the same manifestations during service, which were the basis of the service
diagnosis, will be accepted as showing preservice origin. Congenital or developmental defects, refractive
error of the eye, personality disorders and mental deficiency as such are not diseases or injuries within
the meaning of applicable legislation.

(d) Postservice initial diagnosis of disease. Service connection may be granted for any disease
diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the
disease was incurred in service. Presumptive periods are not intended to limit service connection to
diseases so diagnosed when the evidence warrants direct service connection. The presumptive
provisions of the statute and Department of Veterans Affairs regulations implementing them are intended
as liberalizations applicable when the evidence would not warrant service connection without their aid.

[26 FR 1579, Feb. 24, 1961]
§ 3.304 Direct service connection; wartime and peacetime.

(a) General. The basic considerations relating to service connection are stated in §3.303. The criteria in this section apply only to disabilities which may have resulted from service in a period of war or service rendered on or after January 1, 1947.

(b) Presumption of soundness. The veteran will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service. Only such conditions as are recorded in examination reports are to be considered as noted.

(Authority: 38 U.S.C. 1111)

(1) History of preservice existence of conditions recorded at the time of examination does not constitute a notation of such conditions but will be considered together with all other material evidence in determinations as to inception. Determinations should not be based on medical judgment alone as distinguished from accepted medical principles, or on history alone without regard to clinical factors pertinent to the basic character, origin and development of such injury or disease. They should be based on thorough analysis of the evidentiary showing and careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of the particular injury or disease or residuals thereof.

(2) History conforming to accepted medical principles should be given due consideration, in conjunction with basic clinical data, and be accorded probative value consistent with accepted medical and evidentiary principles in relation to value consistent with accepted medical evidence relating to incurrence, symptoms and course of the injury or disease, including official and other records made prior to, during or subsequent to service, together with all other lay and medical evidence concerning the inception, development and manifestations of the particular condition will be taken into full account.

(3) Signed statements of veterans relating to the origin, or incurrence of any disease or injury made in service if against his or her own interest is of no force and effect if other data do not establish the fact. Other evidence will be considered as though such statement were not of record.

(Authority: 10 U.S.C. 1219)

(c) Development. The development of evidence in connection with claims for service connection will be accomplished when deemed necessary but it should not be undertaken when evidence present is sufficient for this determination. In initially rating disability of record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice. Rating of combat injuries or other conditions which obviously had their inception in service may be accomplished pending receipt of copy of the examination at enlistment and all other service records.
(d) Combat. Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation.

(Authority: 38 U.S.C. 1154(b))

(e) Prisoners of war. Where disability compensation is claimed by a former prisoner of war, omission of history or findings from clinical records made upon repatriation is not determinative of service connection, particularly if evidence of comrades in support of the incurrence of the disability during confinement is available. Special attention will be given to any disability first reported after discharge, especially if poorly defined and not obviously of intercurrent origin. The circumstances attendant upon the individual veteran's confinement and the duration thereof will be associated with pertinent medical principles in determining whether disability manifested subsequent to service is etiologically related to the prisoner of war experience.

(f) Posttraumatic stress disorder. Service connection for posttraumatic stress disorder requires medical evidence diagnosing the condition in accordance with §4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. The following provisions apply to claims for service connection of posttraumatic stress disorder diagnosed during service or based on the specified type of claimed stressor:

(1) If the evidence establishes a diagnosis of posttraumatic stress disorder during service and the claimed stressor is related to that service, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(2) If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(3) If a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of posttraumatic stress disorder and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. For purposes of this paragraph, "fear of hostile military or terrorist activity" means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

(4) If the evidence establishes that the veteran was a prisoner-of-war under the provisions of §3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(5) If a posttraumatic stress disorder claim is based on in-service personal assault, evidence from sources other than the veteran's service records may corroborate the veteran's account of the stressor incident. Examples of such evidence include, but are not limited to: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy. Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social
behavior changes. VA will not deny a posttraumatic stress disorder claim that is based on in-service personal assault without first advising the claimant that evidence from sources other than the veteran’s service records or evidence of behavior changes may constitute credible supporting evidence of the stressor and allowing him or her the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence. VA may submit any evidence that it receives to an appropriate medical or mental health professional for an opinion as to whether it indicates that a personal assault occurred.

(Authority: 38 U.S.C. 501(a), 1154)

§ 3.306 Aggravation of preservice disability.

(a) General. A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

(Authority: 38 U.S.C. 1153)

(b) Wartime service; peacetime service after December 31, 1946. Clear and unmistakable evidence (obvious or manifest) is required to rebut the presumption of aggravation where the preservice disability underwent an increase in severity during service. This includes medical facts and principles which may be considered to determine whether the increase is due to the natural progress of the condition. Aggravation may not be conceded where the disability underwent no increase in severity during service on the basis of all the evidence of record pertaining to the manifestations of the disability prior to, during and subsequent to service.

(1) The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other conditions incurred before enlistment, including postoperative scars, absent or poorly functioning parts or organs, will not be considered service connected unless the disease or injury is otherwise aggravated by service.

(2) Due regard will be given the places, types, and circumstances of service and particular consideration will be accorded combat duty and other hardships of service. The development of symptomatic manifestations of a preexisting disease or injury during or proximately following action with the enemy or following a status as a prisoner of war will establish aggravation of a disability.

(Authority: 38 U.S.C. 1154)

(c) Peacetime service prior to December 7, 1941. The specific finding requirement that an increase in disability is due to the natural progress of the condition will be met when the available evidence of a nature generally acceptable as competent shows that the increase in severity of a disease or injury or acceleration in progress was that normally to be expected by reason of the inherent character of the condition, aside from any extraneous or contributing cause or influence peculiar to military service. Consideration will be given to the circumstances, conditions, and hardships of service.

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) General. A chronic, tropical, prisoner of war related disease, or a disease associated with exposure to certain herbicide agents listed in §3.309 will be considered to have been incurred in or aggravated by service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in §3.309(a) will be considered chronic.

(1) Service. The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period, or which began before and extended beyond December 31, 1946, or began after that date. Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in §3.309(c) and (e).

(2) Separation from service. For the purpose of paragraph (a)(3) and (4) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947, the date of separation will be the date of discharge or release from the period of service on which the claim is based.

(3) Chronic disease. The disease must have become manifest to a degree of 10 percent or more within 1 year (for Hansen's disease (leprosy) and tuberculosis, within 3 years; multiple sclerosis, within 7 years) from the date of separation from service as specified in paragraph (a)(2) of this section.

(4) Tropical disease. The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service as specified in paragraph (a)(2) of this section, or at a time when standard accepted treatises indicate that the incubation period commenced during such service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as apreventative may also be service connected.

(Authority: 38 U.S.C. 1112)

(5) Diseases specific as to former prisoners of war. The diseases listed in §3.309(c) shall have become manifest to a degree of 10 percent or more at any time after discharge or release from active service.

(Authority: 38 U.S.C. 1112)

(6) Diseases associated with exposure to certain herbicide agents. (i) For the purposes of this section, the term “herbicide agent” means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and...
(Authority: 38 U.S.C. 1116(a)(4))

(ii) The diseases listed at §3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and acute and subacute peripheral neuropathy shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam on January 9, 1962, and ending on May 7, 1975. “Service in the Republic of Vietnam” includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(Authority: 38 U.S.C. 501(a) and 1116(a)(3))

(b) Evidentiary basis. The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in §3.303(b) will be considered. The diseases listed in §3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except: (1) Where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic micro-organism); or (2) where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease.

(Authority: 38 U.S.C. 1112)

(c) Prohibition of certain presumptions. No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestation of the chronic disease to the required 10-percent degree.

(d) Rebuttal of service incurrence or aggravation. (1) Evidence which may be considered in rebuttal of service incurrence of a disease listed in §3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression "affirmative evidence to the contrary" will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service.

(2) The presumption of aggravation provided in this section may be rebutted by affirmative evidence that the preexisting condition was not aggravated by service, which may include affirmative evidence that any increase in disability was due to an intercurrent disease or injury suffered after separation from service or evidence sufficient, under §3.306 of this part, to show that the increase in disability was due to
the natural progress of the preexisting condition.

(Authority: 38 U.S.C 1113 and 1153)

§ 3.309  Disease subject to presumptive service connection.

(a) Chronic diseases. The following diseases shall be granted service connection although not otherwise established as incurred in or aggravated by service if manifested to a compensable degree within the applicable time limits under §3.307 following service in a period of war or following peacetime service on or after January 1, 1947, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Anemia, primary.

Arteriosclerosis.

Arthritis.

Arthroplasty, progressive muscular.

Brain hemorrhage.

Brain thrombosis.

Bronchiectasis.

Calculi of the kidney, bladder, or gallbladder.

Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)

Cirrhosis of the liver.

Coccidioidomycosis.

Diabetes mellitus.

Encephalitis lethargica residuals.

Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.

Epilepsies.

Hansen's disease.

Hodgkin's disease.

Leukemia.

Lupus erythematosus, systemic.

Myasthenia gravis.

Myelitis.

Myocarditis.

Nephritis.

Other organic diseases of the nervous system.

Osteitis deformans (Paget's disease).

Osteomalacia.

Palsy, bulbar.

Paralysis agitans.

Psychoses.

Purpura idiopathic, hemorrhagic.

Raynaud's disease.

Sarcoidosis.

Scleroderma.

Sclerosis, amyotrophic lateral.

Sclerosis, multiple.

Syringomyelia.

Thromboangiitis obliterans (Buerger's disease).

Tuberculosis, active.

Tumors, malignant, or of the brain or spinal cord or peripheral nerves.

Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the
preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.

(b) Tropical diseases. The following diseases shall be granted service connection as a result of tropical service, although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under §3.307 or §3.308 following service in a period of war or following peacetime service, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Amebiasis.

Blackwater fever.

Cholera.

Dracontiasis.

Dysentery.

Filariasis.

Leishmaniasis, including kala-azar.

Loiasis.

Malaria.

Onchocerciasis.

Oroya fever.

Pinta.

Plague.

Schistosomiasis.

Yaws.

Yellow fever.

Resultant disorders or diseases originating because of therapy administered in connection with such diseases or as a preventative thereof.

(c) Diseases specific as to former prisoners of war. (1) If a veteran is a former prisoner of war, the following diseases shall be service connected if manifest to a degree of disability of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Psychosis.

Any of the anxiety states.

Dysthymic disorder (or depressive neurosis).

Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.
Post-traumatic osteoarthritis.

Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure, arrhythmia).

Stroke and its complications.

On or after October 10, 2008, Osteoporosis, if the Secretary determines that the veteran has posttraumatic stress disorder (PTSD).

(ii) If the veteran:
(i) Is a former prisoner of war and;
(ii) Was interned or detained for not less than 30 days, the following diseases shall be service connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of §3.307 are also satisfied.

Avitaminosis.

Beriberi (including beriberi heart disease).

Chronic dysentery.

Helminthiasis.

Malnutrition (including optic atrophy associated with malnutrition).

Pellagra.

Any other nutritional deficiency.

Irritable bowel syndrome.

Peptic ulcer disease.

Peripheral neuropathy except where directly related to infectious causes.

Cirrhosis of the liver.

On or after September 28, 2009, Osteoporosis.

(Authority: 38 U.S.C. 1112(b))

(d) Diseases specific to radiation-exposed veterans. (1) The diseases listed in paragraph (d)(2) of this section shall be service-connected if they become manifest in a radiation-exposed veteran as defined in paragraph (d)(3) of this section, provided the rebuttable presumption provisions of §3.307 of this part are also satisfied.

(ii) The diseases referred to in paragraph (d)(1) of this section are the following:
(i) Leukemia (other than chronic lymphocytic leukemia).
(ii) Cancer of the thyroid.
(iii) Cancer of the breast.
(iv) Cancer of the pharynx.
(v) Cancer of the esophagus.
(vi) Cancer of the stomach.
(vii) Cancer of the small intestine.
(viii) Cancer of the pancreas.
(ix) Multiple myeloma.
(x) Lymphomas (except Hodgkin's disease).
(xi) Cancer of the bile ducts.
(xii) Cancer of the gall bladder.
(xiii) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).
(xiv) Cancer of the salivary gland.
(xv) Cancer of the urinary tract.
(xvi) Bronchiolo-alveolar carcinoma.
(xvii) Cancer of the bone.
(xviii) Cancer of the brain.
(xix) Cancer of the colon.
(xx) Cancer of the lung.
(xxi) Cancer of the ovary.

Note: For the purposes of this section, the term “urinary tract” means the kidneys, renal pelves, ureters, urinary bladder, and urethra.

(Authority: 38 U.S.C. 1112(c)(2))

(3) For purposes of this section:

(i) The term radiation-exposed veteran means either a veteran who while serving on active duty, or an individual who while a member of a reserve component of the Armed Forces during a period of active duty for training or inactive duty training, participated in a radiation-risk activity.

(ii) The term radiation-risk activity means:

(A) Onsite participation in a test involving the atmospheric detonation of a nuclear device.

(B) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(C) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.
(D)(1) Service in which the service member was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if, during such service the veteran:

(i) Was monitored for each of the 250 days of such service through the use of dosimetry badges for exposure at the plant of the external parts of veteran's body to radiation; or

(ii) Served for each of the 250 days of such service in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges; or

(2) Service before January 1, 1974, on Amchitka Island, Alaska, if, during such service, the veteran was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(3) For purposes of paragraph (d)(3)(i)(D)(1) of this section, the term “day” refers to all or any portion of a calendar day.

(E) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)).

(iii) The term atmospheric detonation includes underwater nuclear detonations.

(iv) The term onsite participation means:

(A) During the official operational period of an atmospheric nuclear test, presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.

(B) During the six month period following the official operational period of an atmospheric nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during the nuclear test.

(C) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951, through July 1, 1952, August 7, 1956, through August 7, 1957, or November 1, 1958, through April 30, 1959.

(D) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.

(v) For tests conducted by the United States, the term operational period means:

(A) For Operation TRINITY the period July 16, 1945 through August 6, 1945.

(B) For Operation CROSSROADS the period July 1, 1946 through August 31, 1946.

(C) For Operation SANDSTONE the period April 15, 1948 through May 20, 1948.

(D) For Operation RANGER the period January 27, 1951 through February 6, 1951.

(E) For Operation GREENHOUSE the period April 8, 1951 through June 20, 1951.

(F) For Operation BUSTER-JANGLE the period October 22, 1951 through December 20, 1951.

(G) For Operation TUMBLER-SNAPPER the period April 1, 1952 through June 20, 1952.

(H) For Operation IVY the period November 1, 1952 through December 31, 1952.

(I) For Operation UPHOT- KNOTHOLE the period March 17, 1953 through June 20, 1953.
(J) For Operation CASTLE the period March 1, 1954 through May 31, 1954.
(K) For Operation TEAPOT the period February 18, 1955 through June 10, 1955.
(L) For Operation WIGWAM the period May 14, 1955 through May 15, 1955.
(M) For Operation REDWING the period May 5, 1956 through August 6, 1956.
(N) For Operation PLUMBBOB the period May 28, 1957 through October 22, 1957.
(O) For Operation HARDTACK I the period April 28, 1958 through October 31, 1958.
(P) For Operation ARGUS the period August 27, 1958 through September 10, 1958.
(Q) For Operation HARDTACK II the period September 19, 1958 through October 31, 1958.
(R) For Operation DOMINIC I the period April 25, 1962 through December 31, 1962.
(S) For Operation DOMINIC II/PLOWSHARE the period July 6, 1962 through August 15, 1962.

(vi) The term “occupation of Hiroshima or Nagasaki, Japan, by United States forces” means official military duties within 10 miles of the city limits of either Hiroshima or Nagasaki, Japan, which were required to perform or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the Japanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.

(vii) Former prisoners of war who had an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the occupation of Hiroshima or Nagasaki, Japan, by United States forces shall include those who, at any time during the period August 6, 1945, through July 1, 1946:

(A) Were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki, or

(B) Can affirmatively show they worked within the areas set forth in paragraph (d)(3)(vii)(A) of this section although not interned within those areas, or

(C) Served immediately following internment in a capacity which satisfies the definition in paragraph (d) (3)(vi) of this section, or

(D) Were repatriated through the port of Nagasaki.

(Authority: 38 U.S.C. 1110, 1112, 1131)

(e) Disease associated with exposure to certain herbicide agents. If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of §3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of §3.307(d) are also satisfied.

AL amyloidosis
Chloracne or other acneform disease consistent with chloracne
Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)
Hodgkin's disease
Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina)
All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia)

Multiple myeloma

Non-Hodgkin’s lymphoma

Parkinson’s disease

Acute and subacute peripheral neuropathy

Porphyria cutanea tarda

Prostate cancer

Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)

Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi’s sarcoma, or mesothelioma)

Note 1: The term “soft-tissue sarcoma” includes the following:

Adult fibrosarcoma

Dermatofibrosarcoma protuberans

Malignant fibrous histiocytoma

Liposarcoma

Leiomyosarcoma

Epithelioid leiomyosarcoma (malignant leiomyoblastoma)

Rhabdomyosarcoma

Ectomesenchymoma

Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)

Proliferating (systemic) angioendotheliomatosis

Malignant glomus tumor

Malignant hemangiopericytoma

Synovial sarcoma (malignant synovioma)

Malignant giant cell tumor of tendon sheath

Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas

Malignant mesenchymoma

Malignant granular cell tumor
Alveolar soft part sarcoma

Epithelioid sarcoma

Clear cell sarcoma of tendons and aponeuroses

Extraskeletal Ewing's sarcoma

Congenital and infantile fibrosarcoma

Malignant ganglioneuroma

Note 2: For purposes of this section, the term acute and subacute peripheral neuropathy means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

Note 3: For purposes of this section, the term ischemic heart disease does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of Ischemic heart disease.

(Authority: 38 U.S.C. 501(a) and 1112(b))
§ 3.313 Claims based on service in Vietnam.

(a) Service in Vietnam. Service in Vietnam includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.

(b) Service connection based on service in Vietnam. Service in Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

(Authority: 38 U.S.C. 501)

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§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

(a) Compensation for disability due to undiagnosed illness and medically unexplained chronic multisymptom illnesses. (1) Except as provided in paragraph (a)(7) of this section, VA will pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of a qualifying chronic disability, provided that such disability:

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations, or to a degree of 10 percent or more not later than December 31, 2011; and

(ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

(2)(i) For purposes of this section, a qualifying chronic disability means a chronic disability resulting from any of the following (or any combination of the following):

(A) An undiagnosed illness;

(B) A medically unexplained chronic multisymptom illness that is defined by a cluster of signs or symptoms, such as:

(1) Chronic fatigue syndrome;

(2) Fibromyalgia;

(3) Irritable bowel syndrome.

(ii) For purposes of this section, the term medically unexplained chronic multisymptom illness means a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities. Chronic multisymptom illnesses of partially understood etiology and pathophysiology, such as diabetes and multiple sclerosis, will not be considered medically unexplained.

(3) For purposes of this section, “objective indications of chronic disability” include both “signs,” in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification.

(4) For purposes of this section, disabilities that have existed for 6 months or more and disabilities that exhibit intermittent episodes of improvement and worsening over a 6-month period will be considered chronic. The 6-month period of chronicity will be measured from the earliest date on which the pertinent...
Chapter 4—Entitlement to Service Connected Disability Compensation

Evidence establishes that the signs or symptoms of the disability first became manifest.

(5) A qualifying chronic disability referred to in this section shall be rated using evaluation criteria from part 4 of this chapter for a disease or injury in which the functions affected, anatomical localization, or symptomatology are similar.

(6) A qualifying chronic disability referred to in this section shall be considered service connected for purposes of all laws of the United States.

(7) Compensation shall not be paid under this section for a chronic disability:

- If there is affirmative evidence that the disability was not incurred during active military, naval, or air service in the Southwest Asia theater of operations; or
- If there is affirmative evidence that the disability was caused by a supervening condition or event that occurred between the veteran's most recent departure from active duty in the Southwest Asia theater of operations and the onset of the disability; or
- If there is affirmative evidence that the disability is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(b) Signs or symptoms of undiagnosed illness and medically unexplained chronic multisymptom illnesses. For the purposes of paragraph (a)(1) of this section, signs or symptoms which may be manifestations of undiagnosed illness or medically unexplained chronic multisymptom illness include, but are not limited to:

1. Fatigue.
2. Signs or symptoms involving skin.
3. Headache.
5. Joint pain.
6. Neurological signs or symptoms.
7. Neuropsychological signs or symptoms.
8. Signs or symptoms involving the respiratory system (upper or lower).
9. Sleep disturbances.
10. Gastrointestinal signs or symptoms.
11. Cardiovascular signs or symptoms.
12. Abnormal weight loss.

(c) Presumptive service connection for infectious diseases. (1) Except as provided in paragraph (c)(4) of this section, a disease listed in paragraph (c)(2) of this section will be service connected if it becomes manifest in a veteran with a qualifying period of service, provided the provisions of paragraph (c)(3) of this section are also satisfied.

(2) The diseases referred to in paragraph (c)(1) of this section are the following:

1. Brucellosis.
(ii) Campylobacter jejuni.
(iii) Coxiella burnetii (Q fever).
(iv) Malaria.
(v) Mycobacterium tuberculosis.
(vi) Nontyphoid Salmonella.
(vii) Shigella.
(viii) Visceral leishmaniasis.
(ix) West Nile virus.

(3) The diseases listed in paragraph (c)(2) of this section will be considered to have been incurred in or aggravated by service under the circumstances outlined in paragraphs (c)(3)(i) and (ii) of this section even though there is no evidence of such disease during the period of service.

(i) With three exceptions, the disease must have become manifest to a degree of 10 percent or more within 1 year from the date of separation from a qualifying period of service as specified in paragraph (c)(3)(ii) of this section. Malaria must have become manifest to a degree of 10 percent or more within 1 year from the date of separation from a qualifying period of service or at a time when standard or accepted treatises indicate that the incubation period commenced during a qualifying period of service. There is no time limit for visceral leishmaniasis or tuberculosis to have become manifest to a degree of 10 percent or more.

(ii) For purposes of this paragraph (c), the term qualifying period of service means a period of service meeting the requirements of paragraph (e) of this section or a period of active military, naval, or air service on or after September 19, 2001, in Afghanistan.

(4) A disease listed in paragraph (c)(2) of this section shall not be presumed service connected:

(i) If there is affirmative evidence that the disease was not incurred during a qualifying period of service; or

(ii) If there is affirmative evidence that the disease was caused by a supervening condition or event that occurred between the veteran's most recent departure from a qualifying period of service and the onset of the disease; or

(iii) If there is affirmative evidence that the disease is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(d) Long-term health effects potentially associated with infectious diseases. (1) A report of the Institute of Medicine of the National Academy of Sciences has identified the following long-term health effects that potentially are associated with the infectious diseases listed in paragraph (c)(2) of this section. These health effects and diseases are listed alphabetically and are not categorized by the level of association stated in the National Academy of Sciences report (see Table to §3.317). If a veteran who has or had an infectious disease identified in column A also has a condition identified in column B as potentially related to that infectious disease, VA must determine, based on the evidence in each case, whether the column B condition was caused by the infectious disease for purposes of paying disability compensation. This does not preclude a finding that other manifestations of disability or secondary conditions were caused by an infectious disease.

(2) If a veteran presumed service connected for one of the diseases listed in paragraph (c)(2) of this section is diagnosed with one of the diseases listed in column “B” in the table within the time period specified for the disease in the same table, if a time period is specified or, otherwise, at any time, VA will request a medical opinion as to whether it is at least as likely as not that the condition was caused by the veteran having had the associated disease in column “A” in that same table.

Table to §3.317—Long-Term Health Effects Potentially Associated With Infectious Diseases

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<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
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<tbody>
<tr>
<td>Brucellosis</td>
<td>• Arthritis.</td>
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<tr>
<td></td>
<td>• Cardiovascular, nervous, and respiratory system infections.</td>
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<td></td>
<td>• Chronic meningitis and meningoencephalitis.</td>
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<td>• Deafness.</td>
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<td>• Demyelinating meningovascular syndromes.</td>
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<td>• Episcleritis.</td>
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<td></td>
<td>• Fatigue, inattention, amnesia, and depression.</td>
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<td></td>
<td>• Guillain-Barré syndrome.</td>
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<td></td>
<td>• Hepatic abnormalities, including granulomatous hepatitis.</td>
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<td></td>
<td>• Multifocal choroiditis.</td>
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<td></td>
<td>• Myelitis-radiculoneuritis.</td>
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<td></td>
<td>• Nummular keratitis.</td>
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<td></td>
<td>• Papilledema.</td>
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<td></td>
<td>• Optic neuritis.</td>
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<td></td>
<td>• Orchiepiddymitis and infections of the genitourinary system.</td>
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<td></td>
<td>• Sensorineural hearing loss.</td>
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<td></td>
<td>• Spondylitis.</td>
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<td></td>
<td>• Uveitis.</td>
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<tr>
<td>Campylobacter jejuni</td>
<td>• Guillain-Barré syndrome if manifest within 2 months of the infection.</td>
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<tr>
<td></td>
<td>• Reactive Arthritis if manifest within 3 months of the infection.</td>
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<tr>
<td></td>
<td>• Uveitis if manifest within 1 month of the infection.</td>
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<tr>
<td>Coxiella burnetii (Q fever)</td>
<td>• Chronic hepatitis.</td>
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<td></td>
<td>• Endocarditis.</td>
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<td></td>
<td>• Osteomyelitis.</td>
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<td>• Post-Q-fever chronic fatigue syndrome.</td>
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<td></td>
<td>• Vascular infection.</td>
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<tr>
<td>Malaria</td>
<td>• Demyelinating polyneuropathy.</td>
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<td></td>
<td>• Guillain-Barré syndrome.</td>
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<tr>
<td></td>
<td>• Hematologic manifestations (particularly anemia after falciparum malaria and splenic rupture after vivax malaria).</td>
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<tr>
<td></td>
<td>• Immune-complex glomerulonephritis.</td>
</tr>
<tr>
<td></td>
<td>• Neurologic disease, neuropsychiatric disease, or both.</td>
</tr>
<tr>
<td></td>
<td>• Ophthalmologic manifestations, particularly retinal hemorrhage and scarring.</td>
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<td></td>
<td>• Plasmodium falciparum.</td>
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(e) Service. For purposes of this section:

(1) The term Persian Gulf veteran means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.

(2) The Southwest Asia theater of operations refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.


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Section 508 / Accessibility
Memorandum for the Record

Subject: Herbicide use in Thailand during the Vietnam Era

The Compensation and Pension Service has reviewed a listing of herbicide use and test sites outside Vietnam provided to our office by the Department of Defense (DoD). This list contains 71 sites within the U.S. and in foreign countries where tactical herbicides, such as Agent Orange, were used, tested, or stored. Testing and evaluations of these tactical herbicides were conducted by or under the direction of the U.S. Army Chemical Corps, Fort Detrick, Maryland. The list does not contain names of individuals. Additionally, it does not contain any references to routine base maintenance activities such as range management, brush clearing, weed killing, etc., because these vegetation control activities were conducted by the Base Civil Engineer and involved the use of commercial herbicides approved by the Armed Forces Pest Control Board. The application of commercial herbicides on military installations was conducted by certified applicators. DoD has advised us that commercial herbicides were routinely purchased by the Base Civil Engineer under federal guidelines and that records of these procurements were generally kept no longer than two years. We have also reviewed a series of official DoD monographs describing in detail the use, testing, and storage of herbicides at various foreign and domestic locations. In addition, the Project CHECO Southeast Asia Report: Base Defense in Thailand, produced during the Vietnam era, has been reviewed.

Regarding your veteran claimant with Thailand service, the DoD list indicates only that limited testing of tactical herbicides was conducted in Thailand from 2 April through 8 September 1964. Specifically, the location identified was the Pranburi Military Reservation associated with the Replacement Training Center of the Royal Thai Army, near Pranburi, Thailand. The report of these tests noted that 5 civilian and 5 military personnel from Fort Detrick, Maryland conducted the spray operations and subsequent research. This location was not near any U.S. military installation or Royal Thai Air Force Base.

Tactical herbicides, such as Agent Orange, were used and stored in Vietnam, not Thailand. We received a letter from the Department of the Air Force stating that, other than the 1964 tests on the Pranburi Military Reservation, there are no records of tactical herbicide storage or use in Thailand. There are records indicating that commercial herbicides were frequently used for vegetation control within the perimeters of air bases during the Vietnam era, but all such use required approval of both the Armed Forces Pest Control Board and the Base Civil Engineer. In Vietnam, tactical herbicides were aerially
applied by UC-123 aircraft in Operation RANCH HAND or by helicopters under the control of the U.S. Army Chemical Corps. Base Civil Engineers were not permitted to purchase or apply tactical herbicides. There are no records of tactical herbicide spraying by RANCH HAND or Army Chemical Corps aircraft in Thailand after 1964, and RANCH HAND aircraft that sprayed herbicides in Vietnam were stationed in Vietnam, not in Thailand. However, there are records indicating that modified RANCH HAND aircraft flew 17 insecticide missions in Thailand from 30 August through 16 September 1963 and from 14 – 17 October 1966. The 1966 missions involved the spraying of malathion insecticide for the “control of malaria carrying mosquitoes.” These facts are not sufficient to establish tactical herbicide exposure for any veteran based solely on service in Thailand.

While the Thailand CHECO Report does not report the use of tactical herbicides on allied bases in Thailand, it does indicate sporadic use of non-tactical (commercial) herbicides within fenced perimeters. Therefore, if a veteran’s MOS (military occupational specialty) or unit is one that regularly had contact with the base perimeter, there was a greater likelihood of exposure to commercial pesticides, including herbicides. Security police units were known to have walked the perimeters, especially dog handlers. However, as noted above, there are no records to show that the same tactical herbicides used in Vietnam were used in Thailand. Please consider this information when you evaluate the veteran’s claim.

If the veteran’s claim is based on servicing or working on aircraft that flew bombing missions over Vietnam, please be advised that there is no presumption of “secondary exposure” based on being near or working on aircraft that flew over Vietnam or handling equipment once used in Vietnam. Aerial spraying of tactical herbicides in Vietnam did not occur everywhere, and it is inaccurate to think that herbicides covered every aircraft and piece of equipment associated with Vietnam. Additionally, the high altitude jet aircraft stationed in Thailand generally flew far above the low and slow flying UC-123 aircraft that sprayed tactical herbicides over Vietnam during Operation RANCH HAND. Also, there are no studies that we are aware of showing harmful health effects for any such secondary or remote herbicide contact that may have occurred.

If the veteran’s claim is based on general herbicide use within the base, such as small-scale brush or weed clearing activity along the flight line or around living quarters, there are no records of such activity involving tactical herbicides, only the commercial herbicides that would have been approved by the Armed Forces Pest Control Board and sprayed under the control of the Base Civil Engineer. Since 1957, the Armed Forces Pest Control Board (now the Armed Forces Pest Management Board) has routinely provided listings of all approved herbicides and other pesticides used on U.S. Military Installations worldwide. The Compensation and Pension Service cannot provide any additional evidence beyond that described above to support the veteran’s claim. Therefore, unless the claim is inherently incredible, clearly lacks merit, or there is no reasonable possibility that further VA assistance would substantiate the claim [see 38 CFR 3.159(d)], regional offices should send a request to JSRRC for any information that this organization can provide to corroborate the veteran’s claimed exposure.
References

New Procedures for Claims Based on Herbicide Exposure in Thailand and Korea

Effective immediately, when regional offices (ROs) receive disability claims based on exposure to tactical herbicides, such as Agent Orange, from Veterans who served in Thailand or Korea during the Vietnam era, there is no longer a requirement to send an inquiry to the C&P Service Agent Orange Mailbox. Development inquiries can be sent directly to the Army and Joint Services Records Research Center (JSRRC) when the available evidence does not indicate tactical herbicide exposure. This will reduce processing time and provide better service to Veterans.

Herbicide related claims from Veterans with Thailand service

After reviewing documents related to herbicide use in Vietnam and Thailand, C&P Service has determined that there was significant use of herbicides on the fenced in perimeters of military bases in Thailand intended to eliminate vegetation and ground cover for base security purposes. Evidence of this can be found in a declassified Vietnam era Department of Defense (DoD) document titled Project CHECO Southeast Asia Report: Base Defense in Thailand. Therefore, when herbicide related claims from Veterans with Thailand service are received, RO personnel should now evaluate the treatment and personnel records to determine whether the Veteran’s service activities involved duty on or near the perimeter of the military base where the Veteran was stationed.

DoD has provided information that commercial herbicides, rather than tactical herbicides, were used within the confines of Thailand bases to control weeds. These commercial herbicides have been, and continue to be, used on all military bases worldwide. They do not fall under the VA regulations governing exposure to tactical herbicides such as Agent Orange. However, there is some evidence that the herbicides used on the Thailand base perimeters may have been either tactical, procured from Vietnam, or a commercial variant of much greater strength and with characteristics of tactical herbicides. Therefore, C&P Service has determined that a special consideration of herbicide exposure on a facts found or direct basis should be extended to those Veterans whose duties placed them on or near the perimeters of Thailand military bases. This allows for presumptive service connection of the diseases associated with herbicide exposure. The majority of troops in Thailand during the Vietnam era were stationed at the Royal Thai Air Force Bases of U-Tapao, Ubon, Nakhon Phanom, Udorn, Takhli, Korat, and Don Muang. If a US Air Force Veteran served on one of these air bases as a security policeman, security patrol dog handler, member of a security police squadron, or otherwise served near the air base perimeter, as shown by MOS (military occupational specialty), performance evaluations, or other credible evidence, then herbicide exposure should be acknowledged on a facts found or direct basis. However, this applies only during the Vietnam era, from February 28, 1961 to May 7, 1975.

Along with air bases, there were some small Army installations established in Thailand during this period, which may also have used perimeter herbicides in the same manner as the air bases. Therefore, if a US Army Veteran claims a
disability based on herbicide exposure and the Veteran was a member of a military police (MP) unit or was assigned an MP MOS and states that his duty placed him at or near the base perimeter, then herbicide exposure on a facts found or direct basis should be acknowledged for this Veteran. The difference in approach for US Army Veterans is based on the fact that some MPs had criminal investigation duties rather than base security duties. Therefore, the Veteran’s lay statement is required to establish security duty on the base perimeter. This also applies to US Army personnel who served on air bases in Thailand. During the early years of the war in Vietnam, before Air Force security units were fully established on air bases in Thailand, US Army personnel may have provided perimeter security. In such cases, if the Veteran provides a lay statement that he was involved with perimeter security duty and there is additional credible evidence supporting this statement, then herbicide exposure on a facts found or direct basis can be acknowledged for this Veteran.

Evaluation and adjudication of the cases described above can now be conducted by RO personnel without input from the C&P Service Agent Orange Mailbox. These instructions replace those provided in the August 2009 C&P service Bulletin. In summary, no herbicide related claim from a Thailand Veteran should be sent to the C&P Service Agent Orange Mailbox. If evidence shows that the Veteran performed duties along the military base perimeter, ROs should acknowledge herbicide exposure on a facts found or direct basis. If the available evidence does not show service along the base perimeter and does not otherwise indicate exposure to tactical herbicides, place the memorandum for the record from M21-1MR IV.i.2.C.10.q in the claims file and send a request for information to JSRRC.

**Herbicide related claims from Veterans with Korean service**

Currently, tactical herbicide exposure can be presumed for Veterans who served in specific US Army units that operated along the Korean demilitarized zone (DMZ) from April 1968 through July 1969. These units were identified by DoD documents and are listed in M21-1MR IV.i.2.C.10.o. When service treatment or personnel records show that a Veteran was assigned to one of these units during the time frame of tactical herbicide use, the Veteran qualifies for the presumption of exposure. When a Veteran with Korean service alleges herbicide exposure but was not in one of the specified units or was in one of the specified units outside the time frame of tactical herbicide use, ROs were previously instructed to send an inquiry to the Agent Orange Mailbox for any additional evidence that might indicate tactical herbicide exposure.

C&P Service has now determined that ROs are no longer required to submit herbicide exposure inquiries from Korean service Veterans to the Agent Orange Mailbox. Inquires related to potential herbicide exposure outside the specific units and time frame listed in M21-1MR should now be sent directly to JSRRC. These policy changes are intended to reduce the time required to process these claims.
Policy (211)

Special Monthly Compensation (SMC) under 38 U.S.C. § 1114(s) (Statutory Housebound) and a Total Rating Based Upon Individual Unemployability (TDIU)

The United States Court of Appeals for Veterans Claims (Court) held in Bradley v. Peake, 22 Vet. App. 280 (2008), that for purposes of SMC at the (s) rate, the statute does not limit a service-connected disability rated as total to only a schedular 100-percent rating. The regulation permits a TDIU rating based on a single disability to satisfy the statutory requirements of a total rating.

For example, a Veteran who is in receipt of a TDIU rating based on a single disability, but is also service connected for other disabilities totaling 60 percent or more, is entitled to SMC housebound at the (s) rate – or “statutory housebound” – under the Bradley decision. If, subsequently, the Veteran files a claim for an increased evaluation and is increased to a schedular 100-percent evaluation, there is a question whether the Veteran continues to meet the entitlement criteria under Bradley for entitlement to SMC at the (s) rate.

The Court was clear that VA is obligated to maximize the benefits granted. In Bradley, the Court explained that in a case where an increase to a 100-percent schedular rating would subsume the TDIU rating and the Veteran would no longer be entitled to SMC at the (s) rate, VA decision makers are to assess whether the Veteran still meets the criteria for TDIU based on a single disability before substituting a combined total schedular rating for the TDIU. As a result, in cases where a single service-connected condition supports a TDIU rating and the Veteran has other service-connected conditions entitling him or her to statutory housebound, the TDIU evaluation should be retained if the Veteran would otherwise lose the SMC rate.

Recoupment of Attorney Fee Overpayments

Compensation and Pension (C&P) Service is in the process of amending procedures for recouping funds when VA mistakenly fails to make a direct payment of fees to an accredited attorney or agent out of VA funds. Current VA procedures note, if VA fails to withhold a portion of past due benefits for direct payment of fees and the attorney or agent is eligible for fees, VA will pay the representative from VA funds. This procedure will remain the same.

However, new procedures will provide that VA may recoup the amount of the fees by establishing an overpayment against the past due benefits paid to the claimant. After VA pays an eligible attorney or agent out of VA funds, VA will then propose and, if appropriate, create an overpayment in accordance with the due process provisions of 38 C.F.R. §3.103. All due process and debt collection procedures apply, including referral to the Debt Management Center. C&P will issue a Fast Letter (FL) with instructions and sample letters in the near future.

Revised and Updated Vietnam Era Navy Ship List

A revision and update has been provided for the ship list on the C&P Service Intranet site that provides assistance for RO development of claims based on Agent Orange herbicide exposure from Vietnam era Navy Veterans. The site is located under “Rating Job Aids” within the link “Vietnam
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Era Ship Agent Orange Exposure Development Site.” It can be accessed at: http://vbaw.vba.va.gov/bl/21/rating/VENavyShip.htm. For a complete explanation of its use, see Training Letter (TL) 10-06, Adjudicating Disability Claims Based on Herbicide Exposure from U.S. Navy and Coast Guard Veterans of the Vietnam Era.

The revision adds a new category of ships to the current categories of ships that operated on Vietnam’s inland waterways or docked to the shore. The list now includes ships operating on Vietnam’s close coastal waters for extended periods, with evidence that crew members went ashore or that smaller vessels from the ship went ashore regularly with supplies or personnel.

As with the docking category, a statement from the Veteran of personally going ashore is required to qualify for the presumption of herbicide exposure under the new category.

The C&P Service Intranet site continues to be updated with many new ships based on deck log and ship history information obtained by C&P Service. RO personnel should continue to send any documentation received from the Veteran or from the Army and Joint Services Records Research Center (JSRRC), which would justify including a ship on the list, to the Agent Orange Mailbox: VAVBAWAS/CO/211/AGENTORANGE.

Gulf War Regulations and EP 698

TL 10-01, Adjudicating Claims Based on Service in the Gulf War and Southwest Asia, instructed RO personnel to assign a temporary end product (EP) 698 to claims from Gulf War Veterans that involved potential medically unexplained chronic multisymptom illnesses (MUCMIs) other than chronic fatigue syndrome, irritable bowel syndrome, and fibromyalgia. These claims were to be held until a regulatory technical amendment to 38 C.F.R. § 3.317 was finalized, which would clarify that the three named MUCMIs were only examples and not an exclusive list. This regulatory clarification was finalized and became effective on October 7, 2010. Therefore, ROs that have not already done so, can remove the EP 698 and process the claim under a regular EP. The effective date will generally be the date of claim, not the date the amendment was finalized, because this is a clarifying technical amendment rather than creation of a new benefit.

Under current sections 3.317(a) and (b) regulations, Veterans with service in Afghanistan do not qualify for consideration of service connection based on disability patterns of undiagnosed illnesses and MUCMIs [although they do qualify for presumptive service connection of the nine diseases under 3.317(c)]. Therefore, any EP 698 established for a Veteran with Afghanistan service can also be removed from the hold and adjudicated under a regular EP based on the available evidence. Any questions can be forwarded to: VAVBAWAS/CO/211/ENVIRO.
Based on herbicide exposure from Navy Veterans. To date, we have received verification from various sources showing that a number of offshore “blue water” naval vessels conducted operations on the inland “brown water” rivers and delta areas of Vietnam. We have also identified certain vessel types that operated primarily or exclusively on the inland waterways. The ships and dates of inland waterway service are listed below. If a Veteran’s service aboard one of these ships can be confirmed through military records during the time frames specified, then exposure to herbicide agents can be presumed without further development.

All vessels of Inshore Fire Support [IFS] Division 93 during their entire Vietnam tour
- USS Carronade (IFS 1)
- USS Clarion River (LSMR 409) [Landing Ship, Medium, Rocket]
- USS Francis River (LSMR 525)
- USS White River (LSMR 536)

All vessels with the designation LST [Landing Ship, Tank] during their entire tour
[WWII ships converted to transport supplies on rivers and serve as barracks for brown water Mobile Riverine Forces]

All vessels with the designation LCVP [Landing Craft, Vehicle, Personnel] during their entire tour

All vessels with the designation PCF [Patrol Craft, Fast] during their entire tour
[Also called Swift Boats, operating for enemy interdiction on close coastal waters]

All vessels with the designation PBR [Patrol Boat, River] during their entire tour
[Also called River Patrol Boats as part of the Mobile Riverine Forces operating on inland waterways and featured in the Vietnam film “Apocalypse Now”]

USS Ingersoll (DD-652) [Destroyer] [Operated on Saigon River, October 24-25, 1965]

USS Mansfield (DD-728) [Destroyer] [Operated on Saigon River August 8-19, 1967 and December 21-24, 1968]

USS Richard E. Kraus (DD-849) [Destroyer] [Operated on coastal inlet north of Da Nang, June 2-5, 1966, protecting Marines holding a bridge]

USS Basilone (DD-824) [Destroyer] [Operated on Saigon River, May 24-25, 1966]

USS Hamner (DD-718) [Destroyer] [Operated on Song Lon Tao and Long Song Tao Rivers, August 15-September 1, 1966]

USS Conway (DD-507) [Destroyer] [Operated on Saigon River, early August 1966]

USS Fiske (DD-842) [Destroyer] [Operated on Mekong River, June 16-21, 1966]

USS Black (DD-666) [Destroyer] [Operated on Saigon River, July 13-19, 1966]

USS Providence (CLG-6) [Cruiser, Light, Guided Missile] [Operated on Saigon River 3 days during January 1964]

USS Mahan (DLG-11) [Guided Missile Frigate] [Operated on Saigon River October 24-28, 1964]

USS Okanogan (APA-220) [Attack Transport] [Operated on Saigon River July 22-23, 29-30, 1968 and August 5-6, 1968]

USS Niagara Falls (AFS-3) [Combat Stores Ship] [Unloaded supplies on Saigon River and Cam Rahn Bay, April 22-25, 1968]

**Procedures (212)**

**BDN Automated CRSC/CRDP Payments Discontinued**

A recent review revealed that the automated Combat-Related Special Compensation (CRSC)
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Policy (211)

Additional Information on Vietnam Naval Operations

The January 2010 Compensation and Pension (C&P) Service Bulletin provided a list of naval vessels operating in the waters of Vietnam. This list was intended to provide regional offices (ROs) with information to assist with development of herbicide exposure related disability claims from Navy Veterans. The list included vessels that operated primarily or exclusively on the inland “brown water” waterways of Vietnam as well as large “blue water” vessels that operated temporarily on the inland waterways or docked to the shore. The vessels listed below are now added to the original list. If evidence places a Veteran on one of these vessels at the time of inland waterway operations, the Veteran is eligible for the presumption of herbicide exposure. In the case of a ship with confirmed docking to the shore, the Veteran must also provide a statement that he went ashore to be eligible for the presumption.

Vessels that operated primarily or exclusively on the inland waterways

<table>
<thead>
<tr>
<th>All U.S. Coast Guard Cutters with hull designation WBP [patrol boat] and WHEC [high endurance cutters]</th>
<th>USS Colton (APB-36)</th>
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<tbody>
<tr>
<td>USS Asheville (PG-84) [patrol gunboat]</td>
<td>USS Mercer (APB-39)</td>
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<td>USS Gallop (PG-85)</td>
<td>USS Nueces (APB-40)</td>
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<td>USS Antelope (PG-86)</td>
<td>USS Benewah (APB-35)</td>
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<tr>
<th>USS Ready (PG-87) [repair ship]</th>
<th>USS Tutulla (ARG-4)</th>
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<tr>
<td>USS Crockett (PG-88) [repair ship]</td>
<td>USS Satyr (ARL-23)</td>
</tr>
<tr>
<td>USS Marathon (PG-89) [gasoline tanker]</td>
<td>USS Sphinx (ARL-24)</td>
</tr>
<tr>
<td>USS Canon (PG-90) [sleeping quarters]</td>
<td>USS Askari (ARL-30)</td>
</tr>
<tr>
<td>USS Patapsco (AO-1)</td>
<td>USS Indra (ARL-37)</td>
</tr>
<tr>
<td>USS Elkhorn (AOG-7)</td>
<td>USS Krishna (ARL-38)</td>
</tr>
<tr>
<td>USS Genesee (AOG-8) [landing ship dock]</td>
<td>USS Brule (AKL-38)</td>
</tr>
<tr>
<td>USS Kishwaukee (AOG-9) [two barges]</td>
<td>USS Montrose (APA-212)</td>
</tr>
<tr>
<td>USS Tomsibbee (AOG-11) [light cargo ship]</td>
<td>USS Okanogan (APA-210)</td>
</tr>
<tr>
<td>USS Noxubee (AOG-55) [self-propelled barracks ship]</td>
<td>USS Bexar (APA-237)</td>
</tr>
<tr>
<td>USS Mark (AKL-12) [light cargo ship]</td>
<td>USS Benewah (APB-35)</td>
</tr>
<tr>
<td>USS Brule (AKL-28) [harbor tug]</td>
<td>Winnebago (YT-785)</td>
</tr>
<tr>
<td>USS Montrose (APA-212) [attack transport]</td>
<td>Floating Base Platform (YRB-17) [repair, berthing, and messing barge]</td>
</tr>
<tr>
<td>USS Okanogan (APA-210) [landing ship dock]</td>
<td>Floating Base Platform (YRB-18)</td>
</tr>
<tr>
<td>USS Bexar (APA-237) [attack transport]</td>
<td>Floating Base Platform (YRB-20)</td>
</tr>
<tr>
<td>USS Benewah (APB-35) [self-propelled barracks ship]</td>
<td>Floating Base Platform (YRB-20)</td>
</tr>
</tbody>
</table>

Vessels that operated temporarily on Vietnam’s inland waterways or docked to the shore

<p>| USS Card (ACV-11) [escort carrier] mined, sunk, and salvaged in Saigon River Harbor during May 1964 |
|-------------------------------------------------|---------------------|
| USS Maury (AGS-16) [mapping survey ship] conducted surveys of Mekong Delta and other coastal areas and rivers beginning November 1965 through 1969 |
| USS Henry (APA-45) [amphibious transport] operated on Huế River during March 1965 and conducted numerous troop landings through March 1967 |
| USS Montrose (APA-212) operated on Song Hue River during December 1965, operated on Long Bau River during March 1967, and operated on Cua Viet River and at Dong Ha during May 1967 |
| USS Talladega (APA-208) operated on Saigon River during October 1967 |
| USS Bolster (ARS-38) [salvage ship] crew operated on land to extract USS Clark County (LST-601) from beach after grounding at Duc Pho from November 18 to December 1, 1967 |
| USS Canberra (CAG-2) [guided missile cruiser] operated on Saigon River from March 31 through April 1, 1966, on Cua Viet River during December 15, 1966, and on Mekong Delta Harn Luong River during January 15, 1967 |
| USS Sproston (DD-771) [destroyer] operated on Mekong Delta and Ganh Rai Bay during January 1966 |
| USS Pickering (DD-885) operated on Saigon River during November 18, 1965 |</p>
<table>
<thead>
<tr>
<th>Ship Name</th>
<th>Location and Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>USS Epperson (DD-719)</td>
<td>Docked to Da Nang Pier on October 4, 1970</td>
</tr>
<tr>
<td>USS Southerland (DD-743)</td>
<td>Operated on Song Nga Bay and Saigon River during July 1966</td>
</tr>
<tr>
<td>USS John W. Thomason (DD-760)</td>
<td>Operated on Nga Be River during 1969</td>
</tr>
<tr>
<td>USS Buck (DD-761)</td>
<td>Operated on Mekong River Delta and Saigon River during October 1966</td>
</tr>
<tr>
<td>USS Warrington (DD-843)</td>
<td>Operated on Mekong River Delta Rung Sat Special Zone, North of Vung Gahn Rai Bay during March 1967</td>
</tr>
<tr>
<td>USS Dyess (DD-880)</td>
<td>Operated on Saigon River and Rung Sat Special Zone from June 19–July 1, 1966</td>
</tr>
<tr>
<td>USS Perkins (DD-877)</td>
<td>Operated on Saigon River during June 1969</td>
</tr>
<tr>
<td>USS Orleck (DD-886)</td>
<td>Operated on Mekong River Delta during July 1969</td>
</tr>
<tr>
<td>USS Joseph Strauss (DDG-16)</td>
<td>Guided missile destroyer operated on Mekong River Delta and Ganh Rai Bay during November 7 and December 7, 1966</td>
</tr>
<tr>
<td>USS Waddell (DDG-24)</td>
<td>Operated on Cua Viet River during March 1967</td>
</tr>
<tr>
<td>USS Newell (DER-322)</td>
<td>Radar destroyer escort docked at port of Nha Trang during December 22-24, 1965</td>
</tr>
<tr>
<td>USS Duluth (LPD-6)</td>
<td>Amphibious transport dock docked to pier at Da Nang during March and October 1971</td>
</tr>
<tr>
<td>USS Cleveland (LPD-7)</td>
<td>Operated on Cua Viet River and at Dong Ha, as well as Hue River, from November 1967 through 1968 and Saigon River during September 1969</td>
</tr>
<tr>
<td>USS Dubuque (LPD-8)</td>
<td>Docked at Da Nang on March 15, 1973</td>
</tr>
<tr>
<td>USS Boxer (LPH-4)</td>
<td>Amphibious assault ship docked to pier at Cam Rahn Bay on September 9, 1965</td>
</tr>
<tr>
<td>USS Carter Hall (LSD-3)</td>
<td>Landing ship dock operated on Cua Viet River and at Dong Ha during December 1967</td>
</tr>
</tbody>
</table>
Navy and Coast Guard Ships Associated with Service in Vietnam and Exposure to Herbicide Agents

This ships list is intended to provide VA regional offices with a resource for determining whether a particular US Navy or Coast Guard Veteran of the Vietnam era is eligible for the presumption of Agent Orange herbicide exposure based on operations of the Veteran’s ship.

According to 38 CFR § 3.307(a)(6)(iii), the presumption of herbicide exposure requires that the Veteran’s service involved “duty or visitation in the Republic of Vietnam.” For those Veterans who served aboard ships operating primarily or temporarily on the inland waterways of Vietnam, their service involved “duty” in Vietnam. In such cases, the evidence must show that the ship was on the inland waterways and the Veteran was aboard at that time. For those Veterans who served aboard ships that docked and the Veteran went ashore, or served aboard ships that did not dock but the Veteran went ashore, their service involved “visitation” in Vietnam. In cases involving docking, the evidence must show that the Veteran was aboard at the time of docking and the Veteran must provide a statement of personally going ashore. In cases where shore docking did not occur, the evidence must show that the ship operated in Vietnam’s close coastal waters for extended periods, that members of the crew went ashore, or that smaller vessels from the ship went ashore regularly with supplies or personnel. In these cases, the Veteran must also provide a statement of personally going ashore.

This list includes three categories of ships:

- Ships operating primarily or exclusively on Vietnam’s inland waterways
• Ships operating temporarily on Vietnam’s inland waterways or docking to the shore

• Ships operating on Vietnam’s close coastal waters for extended periods with evidence that crew members went ashore or that smaller vessels from the ship went ashore regularly with supplies or personnel

The ships are arranged alphabetically by vessel type (hull letter designations) and numerically within each type (hull number designations). Ship name searches can be done with the “Find” function located in the drop down menu of the toolbar “Edit” function.

This list is not complete. Therefore, the presumption of herbicide exposure should not be denied solely because the Veteran’s ship is not on this list.

*Ships operating primarily or exclusively on Vietnam’s inland waterways*

All vessels referred to in military records as part of the “Mobile Riverine Force”

All vessels with the designation LCM [Landing Craft, Mechanized]

All vessels with the designation LCU [Landing Craft, Utility]

All vessels with the designation LCVP [Landing Craft, Vehicle, Personnel]

All vessels with the designation LST [Landing Ship, Tank]
All vessels with the designation PBR [Patrol Boat, River]

All vessels with the designation PCF [Patrol Craft, Fast or Swift Boat]

All vessels with the designation YFU [Harbor Utility Craft]

All U.S. Coast Guard Cutters with hull designation WPB [Patrol Boat], WHEC [High Endurance Cutter], WLB [Buoy Tender], and WAK [Cargo Vessel] during their Vietnam tours

All vessels of Inshore Fire Support [IFS] Division 93, including:
USS Carronade (IFS 1)
USS Clarion River (LSMR 409) [Landing Ship, Medium, Rocket]
USS Francis River (LSMR 525)
USS White River (LSMR 536)

All vessels with hull designation PG [Patrol Gunboat], including:
USS Asheville (PG-84)
USS Gallop (PG-85)
USS Antelope (PG-86)
USS Ready (PG-87)
USS Crockett (PG-88)
USS Marathon (PG-89)
USS Canon (PG-90)

USS Mark (AKL-12) [Light Cargo Ship]
USS Brule (AKL-28)

USS Cohoes (AN-78) [Net laying ship]

USS Patapsco (AOG-1) [Gasoline Tanker]
USS Elkhorn (AOG-7)
USS Genesee (AOG-8)
USS Kishwaukee (AOG-9)
USS Tombigbee (AOG-11)
USS Noxubee (AOG-56)

USS Montrose (APA-212) [Attack Transport]
USS Okanogan (APA-220)
USS Bexar (APA-237)

USS Benewah (APB-35) [Self-Propelled Barracks Ship]
USS Colleton (APB-36)
USS Mercer (APB-39)
USS Nueces (APB-40)

Barracks Barge (APL-26) [Sleeping Quarters]
Barracks Barge (APL-30)

USS Tutuila (ARG-4) [Repair Ship]

USS Satyr (ARL-23) [Repair Ship]
USS Sphinx (ARL-24)
USS Askari (ARL-30)
USS Indra (ARL-37)
USS Krishna (ARL-38)

USS Belle Grove (LSD-2) [Landing Ship Dock]
USS Comstock (LSD-19)
USS Tortuga (LSD-26)

Floating Base Platform (YRBM-17) [Repair, Berthing, and Messing Barge]
Floating Base Platform (YRBM-18)
Floating Base Platform (YRBM-20)

USN Harbor Tug 84 (YTB-84)
USN Harbor Tug 85 (YTB-85)
USN Winnemucca (YTB-785)
Ships operating temporarily on Vietnam’s inland waterways or docking to shore

USS Card (ACV-11) [Escort Aircraft Carrier] mined, sunk, and salvaged in Saigon River Harbor during May 1964

USS Core (ACV-13) travelled on Saigon River to delivered aircraft to Saigon during June 1965

USS Kula Gulf (CVE-108) [Small Aircraft Carrier: used as helicopter and troop transport] docked at Cam Ranh Bay November 13-16, 1965

USS Samuel Gompers (AD-37) [Destroyer Tender] multiple dockings to piers at Da Nang during April 1972

USS Pictor (AF-54) [Stores Ship] delivered supplies to Dong Ha on Cua Viet River during September 1967 and docked to the pier at Da Nang during 1969

USS Mars (AFS-1) [Combat Stores Ship] operated on Mekong River July 8, 1966

USS Niagara Falls (AFS-3) unloaded supplies on Saigon River and Cam Ranh Bay, April 22-25, 1968

USS Estes (AGC-12) [Amphibious Force Flagship] anchored in mouth of Mekong River during January 1967
USS Maury (AGS-16) [Mapping Survey Ship] conducted surveys of Mekong River Delta and other coastal areas and rivers from November 1965 through 1969.

USS Tanner (AGS-15) conducted surveys of Mekong River Delta and other coastal areas and rivers from October 1966 through 1968.

USS Serrano (AGS-24) conducted mapping surveys of Mekong River Delta and other coastal and river areas from 1966 through 1969.


USS Montrose (APA-212) operated on Song Hue River during December 1965, operated on Long Tau River during March 1967, and operated on Cua Viet River and at Dong Ha during May 1967.

USS Talladega (APA-208) operated on Saigon River during October 1967.

USS Grasp (ARS-24) [Salvage Ship] conducted salvaging operations on Song Cua Dia River and other inland waters from February through April 1969.
USS Safeguard (ARS-25) operated on Ganh Rai Bay and Mekong River Delta during December 8, 1965

USS Bolster (ARS-38) crew operated on land to extract USS Clark County (LST-601) from beach after grounding at Duc Pho from November 18 to December 1, 1967

USS Reclaimer (ARS-42) operated in Saigon Harbor to salvage USS Card (ACV-11) from sinking in Saigon River during May 1964 and in Rung Sat Special Zone of Mekong River Delta salvaging ships during early 1966

USS Tillamook (ATA-192) [Auxiliary Ocean Tug] operated on Long Tau branch of Saigon River during January 1966

USS Mahopac (ATA-196) moored in Saigon during October 6-9, 1965, and operated on Mekong River from October 30-November 3, 1966

USS Ute (ATF-76) [Fleet Ocean Tug] all crew members attended a beach party ashore at Cam Ranh Bay on April 12, 1969

USS Tawakoni (ATF-114) operated in Saigon Harbor to salvage USS Card (ACV-11) from sinking in Saigon River during May 1964

USS Canberra (CAG-2) [Guided Missile Cruiser] operated on Saigon River from March 31 through April 1, 1966, and on Mekong Delta Ham Luong River during January 15, 1967

USS Oklahoma City (CLG-5) [Light Guided Missile Cruiser] docked in Saigon during 21-24 July 1964

USS Providence (CLG-6) operated on Saigon River 3 days during January 1964 and on Cua Viet River during August 1972
USS Conway (DD-507) [Destroyer] operated on Saigon River during early August 1966

USS Sproston (DD-577) operated on Mekong River Delta and Ganh Rai Bay during January 1966

USS Braine (DD-630) docked to pier at Da Nang on November 27, 1966

USS Ingersoll (DD-652) operated on Saigon River October 24-25, 1965

USS Black (DD-666) operated on Saigon River July 13-19, 1966

USS Picking (DD-685) operated on Saigon River during November 16, 1965

USS Ault (DD-689) operated on Mekong River Delta and Soirap River during May 26, 1967

USS Ingraham (DD-694) operated 10 miles up Saigon River on November 12, 1965

USS Charles S. Sperry (DD-697) docked at Da Nang during January 1966

USS Wiltsie (DD-716) operated on Saigon River during July 1966

USS Hamner (DD-718) operated on Song Lon Tao and Long Song Tao Rivers, August 15-September 1, 1966

USS Epperson (DD-719) docked to Da Nang Pier on October 4, 1970
USS Walke (DD-723) operated on Mekong River Delta at Vung Ganh Rei September 2, 1969

USS Mansfield (DD-728) operated on Saigon River August 8-19, 1967 and December 21-24, 1969

USS Lyman K. Swenson (DD-729) traveled up Saigon River for a four-day visit to Saigon during May 1964

USS Southerland (DD-743) operated on Song Nga Bay and Saigon River during July 1966

USS Taussig (DD-746) operated on Soirap River in Mekong River Delta during June 15-26, 1966

USS Lofberg (DD-759) operated on Song Nha Be River during February 18-21 and April 14-15, 1969 and on Song Cua Dai River during April 10-12, 1969

USS Strong (DD-758) operated in Mekong River Delta and Rung Sat Special Zone during April 1968

USS John W. Thomason (DD-760) operated on Nga Be River during 1969

USS Buck (DD-761) operated on Mekong River Delta and Saigon River during October 1966

USS Lloyd Thomas (DD-764) operated on Ganh Rai Bay and Saigon River area during December 28, 1970

USS Rowan (DD-782) operated on Song Tra Khuc River during June 1965
USS Gurke (DD-783) operated on Ganh Rai Bay, Saigon River, and Mekong River during October 1966


USS Higbee (DD-806) operated on Vung Ganh Rai area of Mekong River Delta during March 1-12, 1969

USS Dennis J Buckley (DD-808) operated on Mekong River Delta, Saigon River, and Ganh Rai Bay from December 19, 1966 to January 16, 1967

USS Holder (DD-819) operated on Vung Ganh Rai and Saigon River during August 5, 1966

USS Basilone (DD-824) operated on Saigon River, May 24-25, 1966

USS Hanson (DD-832) anchored in Saigon River on September 13, 1966

USS Fiske (DD-842) operated on Mekong River, June 16-21, 1966

USS Warrington (DD-843) operated on Mekong River Delta Rung Sat Special Zone, North of Vung Ganh Rai Bay during March 1967

USS Leonard F. Mason (DD-852) operated on Vung Ganh Rai Bay and channels during August 1969.

USS Harold J. Ellison (DD-864) operated on Saigon River between late 1965 and mid 1966.

USS Bownson (DD-868) operated on Song Nha Be and Ganh Rai Bay areas of Mekong River Delta during February 1967.

USS Damato (DD-871) operated on Saigon River during December 12-13, 1967.

USS Perkins (DD-877) operated on Saigon River during June 1969.

USS Leary (DD-879) operated on Baie de Ganh Rai of the Mekong River Delta on October 9, 1967.

USS Dyess (DD-880) operated on Saigon River and Rung Sat Special Zone from June 19–July 1, 1966.


USS Floyd B. Parks (DD-884) operated on Saigon River and Ganh Rai Bay during February and March 1968.

USS Orleck (DD-886) operated on Mekong River Delta during July 1969.
USS Barry (DD-933) operated on Saigon River during December 1965

USS Mullinnix (DD-944) operated on Vung Ganh Rai and Saigon River during August 5-6, 1966

USS Henry B. Wilson (DDG-7) [Guided Missile Destroyer] docked at Da Nang pier on April 2, 1967

USS Joseph Strauss (DDG-16) operated on Mekong River Delta March 4, 1966 and Ganh Rai Bay during November 7 and December 7, 1968

USS Waddell (DDG-24) operated on Cua Viet River during March 1967

USS Duncan (DDR-874) [Radar Picket Destroyer] operated on Saigon River during September and October 1965

USS Lowe (DE-325) anchored in Saigon Harbor during April 1966

USS Davidson (DE-1040) [Destroyer Escort] operated on Vung Ganh Rai and Rung Sat Special Zone of Mekong River Delta from September 16 to October 5, 1967

USS Lang (DE-1060) docked to pier #4 in Da Nang Harbor for 38 minutes on January 5, 1972, and sent whaleboat to and from shore with “briefing personnel” on January 8, 1973

USS Newell (DER-322) [Destroyer Escort Radar] docked at port of Nha Trang during December 22-24, 1965

ashore at Da Nang for a short tour of Monkey Mountain on October 6, 1968

USS Duluth (LPD-6) [Amphibious Transport Dock] docked to pier at Da Nang during March and October 1971

USS Dubuque (LPD-8) docked at Da Nang on March 15, 1970

USS Denver (LPD-9) docked to pier at Da Nang to load troops and vehicles on March 24 and June 1, 1971

USS Boxer (LPH-4) [Landing Platform Helicopter] docked to pier at Cam Ranh Bay on September 9, 1965

USS New Orleans (LPH-11) docked to pier at Da Nang on March 12, 1970

USS Gunston Hall (LSD-5) [Landing Ship Dock] delivered equipment to Saigon via Saigon River during March 1968

USS Cabildo (LSD-16) delivered equipment to Nha Be via the Long Tau River during June 1968

USS Catamount (LSD-17) operated on Song Nha Be River during April 1969

USS Thomaston (LSD-28) conducted dredge lift on Saigon River during November 1964

USS Whippoorwill (MSC-207) [Motor Minessweeper] docked to pier at Cam Ranh Bay during July 22-25, 1964

USS Conflict (MSO-426) [Minesweeper] operated on Saigon River April 1, 1966 and Song Huong River (Perfume River) May 14, 1966
USS Fortify (MSO-446) travelled up the Saigon River to Saigon September 19-22, 1964

USS Inflict (MSO-456) travelled up the Saigon River to Saigon September 19-22, 1964

USS Loyalty (MSO-457) travelled up the Saigon River to Saigon September 19-22, 1964, and docked to a pier at Cam Ranh Bay on April 9 and 25, 1971

USS Lucid (MSO-458) docked to pier at Da Nang for off loading and on loading equipment during May 1967

USS Geiger (T-AP-197) [Military Transport] docked at Qui Nhon November 23-26, 1965

**Ships operating on Vietnam’s close coastal waters for extended periods with evidence that crew members went ashore or that smaller vessels went ashore regularly with supplies or personnel**

USS Isle Royale (AD-29) [Destroyer Tender-Repair Ship] salvaged the beached USS Mahomen County (LST-912) at Chu Lai during January 1966 with crewmembers going ashore for stripping operations

USS Mars (AFS-1) [Combat Stores Ship] conducted numerous on shore supply replenishments at Da Nang, Cam Ranh Bay, Vung Tau, and An Thoi from July 1965 to November 1972 with evidence of crewmembers going ashore
**USS Niagara Falls (AFS-3)** conducted on shore supply replenishments with helicopters and small boats at Da Nang, Cam Ranh Bay, Vung Tau, and An Thoi from April 1968 to March 1973

**USS White Plains (AFS-4)** conducted on shore supply replenishments with helicopters and small boats at Da Nang, Cam Ranh Bay, Vung Tau, and An Thoi from January 1969 to March 1973

**USS Estes (AGC-12)** [Amphibious Assault Command Ship] Conducted troop and supply beach landings during March and July-August 1965, at Chu Lai, Da Nang, and Qui Nhon

**USS Vega (AF-59)** [Stores Ship] conducted resupply operations in the Mekong River Delta area on September 13, 1966; on-loaded supplies at An Thoi, Vung Tau, Cam Ranh Bay, and Da Nang during June 1969; and delivered supplies to Da Nang, Cam Ranh Bay, Con Son, An Thoi, and Hon Choi during November-December 1970

**USS Oxford (AGTR-1)** [Technical Research Ship] conducted numerous month-long deployments along the Vietnam coast collecting data, with likelihood that crewmembers went ashore, between 1965 and 1969

**USS Repose (AH-16)** [Hospital Ship] operated continuously on close coastal waters from 1966-1970, with the likelihood that crewmembers went ashore on liberty leave

**USS Sanctuary (AH-17)** operated continuously on close coastal waters from 1967-1970, with the likelihood that crewmembers went ashore on liberty leave
USS Mathews (A K A -96) [Attack Cargo Ship] on-loaded supplies at Da Nang and delivered them up the Cua Viet River to Dong Ha with “mike boats’ from August through December 1967.

USS Skagit (A K A -105) conducted troop and cargo beach “mike boat” landings at Da Nang, Chu Lai, and Quang Ngai from November 1965 to November 1967.

USS Union (A K A /L K A -106) [Attack/Amphibious Cargo Ship] anchored in mouth of the Hue River while conducting operations during April 1965 and conducted troop and cargo “mike boat” beach landings at Da Nang and Cam Ranh Bay from 1965 to 1969.

USS Tulare (A K A /L K A -112) conducted troop and cargo “mike boat” beach landings at Da Nang, Chu Lai, Cam Ranh Bay, and Vung Tau from 1966 to 1972.


USS Bayfield (A P A -33) conducted troop on loading and “mike boat” landings at Da Nang, Chu Lai, Baie de My Han, and Cua Viet River from July through October 1965 and February through May 1967.

USS Cavalier (A P A -37) conducted troop landings at Chu Lai and served as Da Nang station ship, with crew members going ashore, from March- August 1966.

USS Navarro (A P A -215) conducted troop on and off loading operations from May 1965 to February 1968 at Da Nang, Chu Lai, and Quang Ngai Province.
USS Weiss (APD/LPR-135) [High Speed Transport/Small Amphibious Transport] conducted troop-landing operations with Marine and SEAL units at various locations in the Mekong River Delta, Rung Sat Special Zone, and Saigon River and routinely surveyed river mouths and canal entrances for amphibious landings from November 1965 through February 1969.


USS Hector (AR-7) anchored in Vung Tau Harbor repairing other vessels from July 20 to August 16, 1970, with deck logs stating that crew members went ashore on liberty leave.

USS Currituck (AV-7) [Sea Plane Tender] travelled up Saigon River to Saigon during early 1964; operated in Mekong River Delta during June 1965; anchored at Cam Ranh Bay for month long periods during 1966 and 1967 to repair and tend to Navy sea planes, with the likelihood that crew members went ashore on liberty leave.

USS Pine Island (AV-12) anchored at Da Nang during August 1964, and Cam Ranh Bay for month long periods during 1965 and 1966, to repair and tend to Navy sea planes, with the likelihood that crew members went ashore on liberty leave.

USS Salisbury Sound (AV-13) travelled up Saigon River to Saigon during June 1964, and anchored at Cam Ranh Bay for month long periods during 1966, to repair and tend to Navy sea planes, with the likelihood that crew members went ashore on liberty leave.
USS Chicago (CG-11) [Guided Missile Cruiser] while anchored in Da Nang Harbor on May 22, 1969, deck logs show a utility boat went ashore for one hour with 8 crewmembers aboard.

USS Wiltsie (DD-716) [Destroyer] while operating in close coastal waters during September 1970, two officers and five sailors were sent ashore by helicopter for one night.

USS Blue (DD-744) anchored in Da Nang Harbor on April 21, 1968, with crewmembers going ashore for picnic.

USS Myles C. Fox (DD-829) anchored off Qui Nhon and Nha Trang with crewmembers going ashore during February 5-20, 1967.

USS John R. Craig (DD-885) anchored off Nha Trang during summer 1968 with crewmembers going ashore for beach party.

USS Davidson (DE-1045) [Destroyer Escort] sent motorized whaleboat ashore while anchored off coast of Tan My on September 20, 1972.

USS Vancouver (LPD-2) [Amphibious Transport Dock] conducted numerous amphibious troop beach landings with smaller “mike boats” in the areas of Da Nang, Cam Ranh Bay, Cua Viet River, and Mekong River Delta, from August 1966 through 1971.

USS Cleveland (LPD-7) operated on Cua Viet River and at Dong Ha, as well as Hue River, with “mike boats” from November 1967 through 1968 and on the Saigon River during September 1969.

USS Valley Forge (LPH-8) [Landing Platform Helicopter] operated as helicopter and troop transport with helicopters and smaller vessels transporting troops on and off shore from January 1966 to September 1969.
USS Carter Hall (LSD-3) [Landing Ship Dock] conducted troop-landing operations with “mike boats” at Da Nang, Dong Ha on Cua Viet River, and Nha Be on Saigon River, as well as three-month duty as “boat repair ship” at Da Nang, from July 1965 to August 1968.

USS Gunston Hall (LSD-5) conducted numerous troop, supply, and equipment landings at Da Nang, Chu Lai, etc. during 1966 and from March 1968 to February 1970.

USS Cabildo (LSD-16) conducted numerous troop, supply, and equipment landings at Da Nang, Cam Ranh Bay, and Vung Tau from July 1965 to November 1968.

USS Whetstone (LSD-27) on-loaded and delivered troops to Da Nang, Hue, Phu Bai, Dong Ha with beach landings and “mike boats” and served as long term “boat havens” for repairs of smaller vessels at Da Nang and Qui Nhon during 1965, 1966, 1968, and 1969.

USS Thomaston (LSD-28) conducted numerous troop and supply landings with small boats at Da Nang, Cam Ranh Bay, Song Co Chien River area, and Cua Viet River area from 1965 to 1972 [Note: no AO exposure for 1975 operations].

USS Alamo (LSD-33) conducted numerous troop, supply, and equipment landings with smaller boats at Da Nang and elsewhere between 1965 and 1972 with evidence that crewmembers went ashore for beach parties.

USS Epping Forest (MCS-7) [Mine Countermeasure Support Ship] conducted “goodwill” tours at Cam Ranh Bay and Nha Trang with crewmembers going ashore and Vietnamese coming aboard during
September-October 1964, and mine sweep of Cua Viet River using smaller vessels from main ship during May 1968
The Honorable Lane Evans  
Ranking Member  
Committee on Veterans’ Affairs  
335 Cannon House Office Building  
Washington, DC 20515  

Dear Congressman Evans:

This is in response to your letter to the Secretary of Defense concerning the use and storage of Vietnam-era herbicides, including the contaminant dioxin on Guam. I am responding on his behalf.

The Department has found no record of the use, storage, or testing of Herbicides Orange, Blue, or White on Guam. In 1952, roughly 5,000 drums of Herbicide Purple were transported to Guam and stored there in anticipation of use on the Korean Peninsula. The herbicide was never used and was returned to the United States. Although other herbicides may have passed through Guam during the Vietnam Conflict, we have no record of long-term storage or use of these herbicides on Guam.

The presence of dioxin contamination at a site does not necessarily indicate that Herbicide Orange was used or stored at that site. According to Air Force studies, the dioxins at sites references in the Public Health Assessment were associated with burned material. Access to sites on Guam with elevated dioxin levels is highly restricted and public exposure is not expected.

A summary of information obtained from a search of the records at the U.S. Army’s Center for Unit Records Research on the use Vietnam-era herbicides in the other locations you requested is attached and has already been supplied to the Department of Veterans Affairs.

Sincerely,

[Signature]

Philip W. Grone
Principal Assistant Deputy Under Secretary of Defense  
(Installations and Environment)

Attachment:
As stated
Chapter 4—Entitlement to Service Connected Disability Compensation

Attachment

Summary of Available Information
On Use, Testing and Storage of
Dioxin Containing Herbicides

Aberdeen Proving Ground, Aberdeen MD

Report Title: Summary Report, Herbicide Operations Conducted from Riverine Watercraft
Location: Poole's Island, Aberdeen Proving Ground, MD
Date(s): 7/14/1969
Herbicides: Orange, Orange plus foam, Orange plus foam Orange, Foam
Summary: During the week of 7/14/1969, personnel from Naval Applied Science Laboratory in conjunction with personnel from Limited War Laboratory conducted a defoliation test along the shoreline.

Apalachicola National Forest (Sophopy, Florida)

Report Title: Technical Report 114, Field Evaluation of Desiccants and Herbicide Mixtures as Rapid Defoliants
Location: Apalachicola National Forest near Sophopy, FL
Date(s): 5/3/1967-5/8/1967
Herbicides: basic desiccants and Orange/Blue
Summary: During the period of 12/1966 - 10/1967, a comprehensive short-term evaluation was conducted by personnel from Fort Detrick's Plant Science Lab in coordination with contract research on formulations by chemical industry and field tests by USDA and University of Hawaii sites.

Avon Air Force Base, Florida

Report Title: Special Report No. 149, Low Volume Anti-crop Aerial Spray Trials
Location: Avon Air Force Base, FL
Date(s): 2/1951- 4/1951
Herbicides: butyl 2,4 D
Summary: Trials were conducted at Avon Air Force Base, FL by Chemical Corps with personnel of the Air Force and Navy to determine the practical effectiveness of spraying pure anti-crop herbicides at low volume from aircraft. C-47 and Navy XBT2D-1 aircraft with various nozzles were used.

Report Title: Special Report No. 225, Chemical Anti-crop Aerial Spray Trials Using Jet Aircraft also in Special Report 232, Some Effects of Altitude and Airspeed on the Behavior of Chemical Anti-crop Sprays
Location: Avon Park Air Force Base, FL
Date(s): Spring 1954
Herbicides: butyl 2,4-D, butyl 2,4,5-T, Isopropyl 2,4-D
Summary: Series of tests were conducted at Avon Park AFB during the spring of 1954 to study the behavior of chemical anti-crop aerial sprays when released from high-speed jet aircraft. The Navy F3D jet fighter was used with Aero 14A Airborne Spray Tanks to disperse the anti-crop herbicides.
Beaumont, Texas

**Report Title:** Special Report No. 13, Marking and Defoliation of Forest Vegetation

**Location:** Beaumont, TX

**Date(s):** 1950-51

**Herbicides:** 2,4-D

**Summary:** The purpose was to determine means of accomplishing defoliation of tropical forest vegetation by application of a chemical agent. Here, irrigation water studies were done with the agent.

**Report Title:** Special Report No. 79, Destruction by Chemical Agents, also see Special Report No. 25, Vigo Plant CWS, Terre Haute, Indiana, and Beaumont TX, Box 12

**Location:** Beaumont, TX

**Date(s):** 6/1944

**Herbicides:** LN-phenox

**Summary:** Small plot experiments were commenced to test the effectiveness of LN herbicides. Various trials were done under contract with the USDA, aided by personnel at Camp Detrick. Here, they were testing on rice crops.

Brawley, California

**Report Title:** Special Report No. 13, Marking and Defoliation of Forest Vegetation

**Location:** Brawley, CA

**Date(s):** 1950-51

**Herbicides:** 2,4-D

**Summary:** The purpose was to determine means of accomplishing defoliation of tropical forest vegetation by application of a chemical agent. Here, irrigation water studies were done with the agent.

Bushnell Army Air Field, Florida

**Report Title:** Special Report No. 79, Destruction by Chemical Agents

**Location:** Bushnell Army Air Field, FL

**Date(s):** 2/1945

**Herbicides:** LN-phenox

**Summary:** Small plot experiments were commenced to test the effectiveness of LN herbicides. Various trials were done under contract with the USDA, aided by personnel at Camp Detrick. Here, it was aerial spray experiments on potted plants.

**Report Title:** Crop Destruction by Aerial Sprays, Preliminary Trials

**Location:** Bushnell Army Air Field, Bushnell, FL

**Date(s):** 2/1945-4/1945

**Herbicides:** 2,4-D and its ammonium salt

**Summary:** Trials, performed by C.W.S. personnel from Camp Detrick, MD, tested the practicability of severely injuring or destroying crop plants sprayed from smoke tanks mounted on tactical aircraft.
Camp Detrick, Maryland

Report Title: Special Report No. 92, Field Plot Experiments with Plant Inhibitors 1946 and 1947 Seasons
Location: Camp Detrick, MD-Fields A,B, and C
Date(s): 1946-1947
Herbicides: 2,4,5-T, 2,4,5-T triethanolamine, tributylyphosphate, ethyl 2,4-D, butyl 2,4,5-T triet 2,4-D,
Summary: The experiments were directed mainly towards the investigation of plant inhibitors applied as sprays or to the soil in the solid form to be taken up by the roots.

Report Title: Special Report No. 130, Field Plot Experiments with Plant Inhibitors 1949 Season
Location: Camp Detrick, MD-Fields C,D,E
Date(s): 1949
Herbicides: triethylene, 2,4,5-T, carbamates
Summary: The experiments were directed mainly towards the investigation of plant inhibitors applied as sprays or to the soil in the solid form to be taken up by the roots.

Report Title: Special Report No. 105, Field Plot Experiments with Plant Inhibitors 1948 Season
Location: Camp Detrick, MD-Fields C,D, and E
Date(s): 1948
Herbicides: 2,4,5-T, isopropyl phenol carbamate, LN-2426, 2,4-D
Summary: The experiments were directed mainly towards the investigation of plant inhibitors applied as sprays or to the soil in the solid form to be taken up by the roots.

Report Title: Special Report No. 153, Field Plot Experiments with Plant Inhibitors, 1950 Season
Location: Camp Detrick, MD-Fields A,B,D,E
Date(s): 1950
Herbicides: 2464, butyl 2,4-D, 974, butyl 2,4,5-T, q;q 143 and 974
Summary: The experiments were directed mainly towards the investigation of plant inhibitors applied as sprays or to the soil in the solid form to be taken up by the roots.

Report Title: Special Report No. 156, Field Plot Experiments with Plant Inhibitors, 1950-51 Season
Location: Camp Detrick, MD-Field F
Date(s): 1950-51
Herbicides: 2464, carbamate, butyl 2,4-D, 143 and 974 (orange?), 2,4,5-T, 2,4-D, Orange
Summary: The experiments were directed mainly towards the investigation of plant inhibitors applied as sprays or to the soil in the solid form to be taken up by the roots.

Location: Fort Detrick, MD
Date(s): 8/1961-6/1963
Herbicides: 1410 compounds
Summary: From 8/1961 to 6/1963, compounds were spray-tested in the greenhouse to evaluate them as effective defoliants, desiccants, and herbicides.

Report Title: Special Report No. 201, Field Development of Chemical Anticrop Agents, Response of Field Grown Crops to Chemical Anticrop Agents Released from Experimental Spray tower
Location: Area B, Camp Detrick, MD
Date(s): Spring/Summer 1953
Herbicides: 3:1 mixture 2,4-D and 2,4,5-T
Summary: Personnel at Camp Detrick tested the feasibility of using an experimental spray tower for applying a mixture of chemical anti-crop Herbicides to broad-leaf crops.
Dar and Prek Chlong, Cambodia

Report Title: Record 1305-01, Report of Cambodian Rubber Damage
Location: southeastern part of Kompong Cham Province and Dar and Prek Chlong plantations, Cambodia
Date(s): 6/1969
Herbicides: Orange
Summary: In 6/1969, the US government received notice of charge by Cambodian government that major defoliation damage to the Cambodian rubber plantation near the Republic of Viet Nam border had occurred as a result of US defoliation activity. This was confirmed by a team of experts.

Eglin Air Force Base, Florida

Report Title: Minutes-Meeting of Vegetation Control Subcommittee of the JTCG/CB, 2-3 March 1971
Location: Eglin AFB, FL, C-52A test area
Date(s): 1962-70
Herbicides: Orange (1962-68), Purple (1962-68), White (1967-70), Blue (1968-70)
Summary: CFT John Hunter discussed vegetation changes and ecological studies of the 2 square mile test area which had been sprayed with herbicides over the period 1962-70.

Report Title: Spread Factor Study of Drops of Orange and Stull Bifluid Defoliants on Krome Kote Cards and Plant Leaves
Location: Eglin AFB, FL
Date(s): 6/11/1968-9/12/1968
Herbicides: orange, Bifluid #1, Bifluid#2, Stull Bifluid
Summary: A spread factor study was performed by the Army to correlate the spherical drop sizes of both Orange and Stull Bifluid defoliants. It involved development of new techniques to determine spread factors over an extended range of drop sizes. A spinning cup drop generator was used.

Report Title: Special Report No. 184, Anticrop Aerial Spray Trials, Phase III
Location: Eglin Air Force Base, FL
Date(s): 11/1952-12/1952
Herbicides: 2,4-D, 2,4,5-T: 143 and 974, respectively
Summary: Two trials: Chemical Corps concerned with basic fundamental work, using 2,4-D; Air Force concerned with evaluating prototype large capacity spray system for aircraft installation using 2,4,5-T, primarily. Used 3 atomizing nozzles: Bete Fog Nozzles, Whirljett Spray Nozzles, and Fogjet 1.5F50.

Fort Gordon, Georgia

Report Title: Technical Report 114, Field Evaluation of Desiccants and Herbicide Mixtures as Rapid Defoliants
Location: Fort Gordon, GA
Date(s): 7/15/1967- 7/17/1967
Herbicides: in-house desiccants mixtures and formulations, Orange and Blue
Summary: During the period of 12/1966 - 10/1967, a comprehensive short-term evaluation was conducted by personnel from Fort Detrick's Plant Science Lab in coordination with contract research on formulations by chemical industry and field tests by USDA and University of Hawaii sites.
Fort Ritchie, Maryland

Report Title: Miscellaneous Publication 8, Proceedings of the Second Defoliation Conference 5-6 August 1964
Location: Fort Ritchie, MD
Date(s): 1963
Herbicides: Tordon, 2,4-D, Orange, diquat, endoathol, and combinations of each with Tordon
Summary: Various studies were done to explore the effectiveness of different herbicides. They were all field trials. These studies were done by personnel from the US Army Biological Laboratories.

Report Title: Technical Report BWL 16, Defoliation and Desiccation
Location: Fort Detrick, MD; Fort Ritchie, MD
Date(s): 1956-1957
Herbicides: various, 577 compounds
Summary: In 1956 and 1957, defoliation and desiccation were carried out at Fort Detrick and Fort Ritchie, MD, by the Chemical Corps and Biological Warfare Research. These were bench tests.

Fredericton, New Brunswick, Canada

Report Title: Technical Report 114, Field Evaluation of Desiccants and Herbicide Mixtures as Rapid Defoliants
Location: Base Gagetown near Fredericton, New Brunswick, Canada
Date(s): 6/20/1967-6/24/1967
Herbicides: basic desiccants and Orange, Blue, various
Summary: During the period of 12/1966 - 10/1967, a comprehensive short-term evaluation was conducted by personnel from Fort Detrick's Plant Science Lab in coordination with contract research on formulations by chemical industry and field tests by USDA and University of Hawaiisites.

Guanica, and Joyuda, Puerto Rico

Report Title: Second Quarterly Progress Report of Research carried out by the Federal Experiment Station in Puerto Rico for The Chemical Corps Biological Laboratories, Fort Detrick on contract #CD6-404-3654
Location: Guanica and Joyuda, PR
Date(s): 6/1956-9/1956
Herbicides: 2,4,5-T, potassium cyanate, amiendo, F-2, 6-Ca-4, Y-F Tree and Brush Killer, ACP M-118, Shed-A-Leaf
Summary: 9 chemicals were evaluated on 16 genera of tropical woody between June and September. The chemicals were sprayed to duplicate small branches, using a microsprayer.

Report Title: Third Quarterly Progress Report of Research carried out by the Federal Experiment Station in Puerto Rico for The Chemical Corps Biological Laboratories, Fort Detrick on contract #CD6-404-3654
Location: Las Mesas and La Jagua, Mayaguez, Joyuda at Cabo Rojo, and Guanica Insular Forest at Guanica, PR
Date(s): 9/1956-12/1956
Herbicides: 6-Ca-4, Liojn Oil, 2,4,5-T, B-1613, B-1638, Ammate, V-C1-186, endoathol, shed-a-leaf, M-118, Y-F, esteron 2,4-D, F3, F4, F5, F6
Summary: 16 compounds with defoliating properties were evaluated using 28 different tropical woody plants, each representing a separate genus. The chemicals were applied to duplicate small branches with a microsprayer and to single larger branches or whole trees with a 2-gallon knapsack sprayer.
Chapter 4—Entitlement to Service Connected Disability Compensation

Guanica, and Joyuda, Puerto Rico (continued)

Report Title: Fourth Quarterly Progress Report of Research carried out by the Federal Experiment Station in Puerto Rico for The Chemical Corps Biological Laboratories, Fort Detrick on contract #CD6-404-3654
Location: Las Mesas and La Jagna, Mayaguez, Guanica Beach, PR
Date(s): 1/1957-3/1957
Herbicides: V-C 3-105, V-C 1-21, V-C 1-443, F-7, TBP, Phillips 713, V-C 3-173
Summary: 7 compounds were evaluated on 29 different woody plants to determine their effectiveness as defoliants, desiccants, and as killing Herbicides. They were applied with a microsprayer to the upper leaf surfaces of duplicate small branches.

Report Title: Quarterly Progress Report of Research carried out by the Federal Experiment Station in Puerto Rico for The Chemical Corps Biological Laboratories, Fort Detrick on contract #CD6-404-3654
Location: Las Mesas and La Jagna, Mayaguez, Guanica Beach, PR
Date(s): 4/1957-6/1957
Herbicides: B-1676, B-1638, NP 1098, SD 1399, Ammate, Shed-a-leaf
Summary: 7 compounds were sprayed on 25 different plants in order to evaluate their effectiveness as defoliants, desiccants, and killing agents. The compounds were applied with a microsprayer to the upper and lower leaf surfaces of duplicate small branches.

Gulfport, Mississippi

Report Title: Minutes of the Quarterly Meetings for Calendar Year 1970 of the Subcommittee on Detonants/Anti-crop Systems, Joint Technical Coordinating Group/Chemical Biological
Location: Gulfport, Miss.
Date(s): 1968-1970
Herbicides: Orange
Summary: While discussing the mandatory disposal of Orange, it was mentioned that 15,161 drums were being stored at Gulfport, Mississippi.

Huntington County, State College, Pennsylvania

Report Title: Soil Applied Herbicides in the Control of Temperate Zone Grasses, Broadleaf Weeds and Woody Plants
Location: Stone Valley Experimental Forest in Huntington County and near State College in Centre County, PA
Date(s): 3/1969-10/1970
Herbicides: bromacil, diuron, tandex, fenuron, picloram
Summary: Soil- applied herbicides were studied by the U of Pa with Ft Detrick for 18 months for their effectiveness, rapidity of action, and duration of response in native stands of central PA grasses, broadleaf weeds and woody plants. These herbicides were spread or sprayed.

Jacksonville, Florida

Report Title: Spray Test Calibration of the HIDAL (HUS-1 or H-34)
Location: Jacksonville, FL
Date(s): 7/18/1962-7/21/1962
Herbicides: Purple, Fuel Qld, Mix
Summary: The HIDAL was used successfully on an H-34 helicopter to spray herbicidal materials. Therefore, it had not been calibrated previously. Spray tests were performed to do so. This was done under order by QSD/ARPA.

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Kauai, Hawaii

Report Title: Technical Report 114, Field Evaluation of Desiccants and Herbicide Mixtures as Rapid Defoliants
Location: Kauai Branch Station near Kapaa, Kauai, HI
Herbicides: Blue, diquat, parquat, Orange, PCP, Picloram, White, HCA, 2,4,5-T, Endothall
Summary: During the period of 12/1966 - 10/1967, a comprehensive short-term evaluation was conducted by personnel from Fort Detrick's Plant Science Lab in coordination with contract research on formulations by chemical industry and field tests by USDA and University of Hawaiisites.

Report Title: Miscellaneous Publication 33, Information Manual for Vegetation Control in Southeast Asia
Location: Kauai, HI
Date(s): 1967
Herbicides: Orange
Summary: Field tests of defoliants were designed to evaluate such variables as rates, volume of application, season, and vegetation. Data from aerial application tests at several CONUS and OCONUS locations are provided in tables.

Kingston, Rhode Island

Report Title: Special Report No. 130, Field Plot Experiments with Plant Inhibitors 1949 Season
Location: Kingston, RI
Date(s): 7/26/1949, 1950-51
Herbicides: trieth.2,4,5-T, butyl 2,4,5-T,974
Summary: The experiments were directed mainly towards the investigation of plant inhibitors applied as sprays or to the soil in the solid form to be taken up by the roots.

Kompong, Cham Province, Cambodia

Report Title: Record 1305-01, Report of Cambodian Rubber Damage
Location: southeastern part of Kompong Cham Province and Dar and Prek Clong plantations, Cambodia
Date(s): 6/1969
Herbicides: Orange
Summary: In 6/1969, the US government received notice of charge by Cambodian government that major defoliation damage to the Cambodian rubber plantation near the Republic of Viet Nam border had occurred as a result of US defoliation activity. This was confirmed by a team of experts.

Laos

Report Title: Herbicide Operations in Southeast Asia, July 1961-June 1967
Location: Laos
Date(s): 12/1965- 1967
Herbicides: Orange
Summary: In December 1965, herbicide operations were begun in Laos, with sorties being flown from Tan Son Nhut and Da Nang. The purpose was the exposure of foot trails, dirt roads and other lines of communication that crossed into South Viet Nam. This network leads from North Viet Nam, through the eastern panhandle, to Cambodian border.
Chapter 4—Entitlement to Service Connected Disability Compensation

Report Title: Technical Report 114, Field Evaluation of Desiccants and Herbicide Mixtures as Rapid Defoliants
Location: Las Marias, Puerto Rico
Date(s): 2/1967-12/1967
Herbicides: various, including Orange
Summary: During the period of 12/1966 - 10/1967, a comprehensive short-term evaluation was conducted by personnel from Fort Detrick’s Plant Science Lab in coordination with contract research on formulations by chemical industry and field tests by USDA and University of Hawaiians.

Las Mesas, Cerros and LaJugua, Mayaguez, Puerto Rico

Location: Las Mesas Cerros, Mayaguez, PR
Herbicides: picloram, bromacil, pyriclor
Summary: In 1967, the Dow Chemical Company was awarded a DoD research contract. The objective was to prepare as pellets mixtures of various herbicides and to test them on varying vegetation situations for the control of a range of plant species.

Report Title: First Quarterly Progress Report of Research carried out by the Federal Experiment Station in Puerto Rico for The Chemical Corps Biological Laboratories, Fort Detrick on contract #CD6-404-3554
Location: Las Mesas and La Jaua experimental areas at Mayaguez, PR
Date(s): 2/1956-6/1956
Herbicides: 2,4,5-T, 2,4-D, pentachlorophenol, ammace, weedzoji, endothal Harvestaid, Butyne-1,4-diol
Summary: During February to June, 9 chemicals were evaluated in PR on 16 genera tropical woody plants. The chemicals were applied in highly concentrated solutions with a microsprayer to the leaves.

Report Title: Progress Report of Research carried out by the Federal Experiment Station in Puerto Rico for The Chemical Corps Biological Laboratories, Fort Detrick on contract #CD6-404-3554
Location: Las Mesas and La Jaua, Mayaguez, PR
Date(s): 7/1957-12/1957
Herbicides: MgClO3, Golden Harvest Defoliant, Dow-M562, F-8, F-9, F-10, F-11, F-12
Summary: 8 different spray formulations were applied to 16 different tropical trees and shrubs in order to evaluate their effectiveness as defoliants, desiccants, and killing agents.

Loquillo, Puerto Rico

Report Title: Miscellaneous Publication 93, Information Manual for Vegetation Control in Southeast Asia
Location: Loquillo, PR
Date(s): 4/1966, 10/1966
Herbicides: Orange
Summary: Field tests of defoliants were designed to evaluate such variables as rates, volume of application, season, and vegetation. Data from aerial application tests at several CONUS and OCONUS locations are provided in tables.
Mauna Loa, Hilo, Hawaii

Report Title: Dow Sponsored Test of TORDON Ester and Orange in Hawaii
Location: State Forest area, 3500 ft. elevation on slope of Mauna Loa, near Hilo, HI
Date(s): 12/2/1966, 12/4/1966, 1/12/1967
Herbicides: Orange, M-3140, TORDON ester, 2,4-D ester, 2,4,5-T ester
Summary: The purpose of this project was to evaluate iso-octyl ester of picloram (TORDON) in mixtures with ORANGE, as a candidate defoliant agent, using ORANGE as standard. There were personnel from Fort Detrick there.

Operation PACER HO (Disposal at Sea)

Report Title: Technical Report USAF OEHQ TR 78-92, the Toxicology, Environmental Fate and Human Risk of Herbicide Orange and its Associated Dioxin
Location: Sea
Date(s): Summer 1977
Herbicides: Orange
Summary: In 1977, the USAF incinerated 2.22 million gallons of Herbicide Orange at sea in an operation entitled PACER HO. Extensive industrial hygiene sampling efforts supporting the transfer operations at Gulfport, MS and Johnston Island indicated all exposures were inconsequential (2-3 orders of magnitude below the TLVs for 2,4-D and 2,4,5-T)

Pinal Mountains, Globe, Arizona

Report Title: Investigation of Spray Project near Globe, AZ
Location: Pinal Mountains near Globe, AZ
Date(s): 1965, 1966, 1968, and 1969
Herbicides: 2,4-D iso-octyl-ester, 2,4,5-T iso-octyl-ester, silvex, propyleneglycolbutylether ester, 2,4,5-T butyl ester, 2,4,5-T 2-e-eh
Summary: In 1965, the US Forest Service began a land improvement program in the Pinal Mountains. The program called for spraying an area of chaparral with herbicides to accomplish the objectives of multiple land use.

Pranburi and other locations in Thailand

Report Title: Appendix D, Aerial Herbicide Applications Evaluated for Maximum Effect and Minimum Drift
Location: Replacement raining Center of the Royal Thai Army near Pranburi, Thailand
Date(s): 1964 and 1965
Herbicides: Orange, Purple
Summary: An extensive series of tests were conducted by Fort Detrick during 1964 and 1965 in collaboration with the Military Research and Development Center of Thailand. The objective was to perform onsite evaluation of phytotoxic chemicals on vegetation in SE Asia.

Prosser, Washington

Report Title: Special Report No. 13, Marking and Defoliation of Forest Vegetation
Location: Prosser, WA
Date(s): 1950-51
Herbicides: 2,4-D
Summary: The purpose was to determine means of accomplishing defoliation of tropical forest vegetation by application of a chemical agent. Here, irrigation water studies were done with the agent.
Rio Grande, Puerto Rico

Report Title: Formulation and Testing of Broad Spectrum of Herbicide Pellets, First Six Month's Report on Contract No. DAAA13-67-C-0218

Location: near Rio Grande, on the northeast coast of Puerto Rico


Herbicides: picloram, bromacil, pyriclor, and terbacin

Summary: In 1967, the Dow Chemical Company was awarded a DoD research contract. The objective was to prepare as pellets mixtures of various herbicides and to test them on varying vegetation situations for the control of a range of plant species.

Wayside and Wilcox, Mississippi

Report Title: Formulation and Testing of Broad Spectrum of Herbicide Pellets, First Six Month’s Report on Contract No. DAAA13-67-C-0218

Location: near Wayside, Miss., Wilcox Road, Greenville, Miss.

Date(s): 9/19/1967

Herbicides: picloram, bromacil, pyriclor, and terbacin, Orange, caccodylic acid

Summary: In 1967, the Dow Chemical Company was awarded a DoD research contract. The objective was to prepare as pellets mixtures of various herbicides and to test them on varying vegetation situations for the control of a range of plant species.
THE ISSUE

Entitlement to service connection for diabetes mellitus type II, to include as due to herbicide exposure.

REPRESENTATION

Appellant represented by: The American Legion

ATTORNEY FOR THE BOARD

R. Morales, Associate Counsel

INTRODUCTION

The Veteran served on active duty from July 1962 to August 1966, including service in the waters offshore of the Republic of Vietnam.

This appeal comes before the Board of Veterans' Appeals (Board) from an October 2002 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO) in St. Petersburg, Florida. The appeal was remanded for additional development in March 2009.

FINDINGS OF FACT

1. The Veteran served in the Republic of Vietnam, specifically in an inland waterway, during Vietnam era active service.

2. The Veteran has a current diagnosis of diabetes mellitus.

3. The Veteran's diabetes mellitus is presumed to be etiologically related to his service in Vietnam.

CONCLUSIONS OF LAW


2. The Veteran's diabetes mellitus is presumed to have been incurred as a result of the Veteran's exposure to Herbicide during service. 38 U.S.C.A. §§ 1110, 1116 (West 2002); 38 C.F.R. §§ 3.303, 3.307, 3.309 (2009).
REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran is seeking entitlement to service connection for diabetes mellitus. In essence, he contends that he was exposed to herbicides in the inland waters of the Vietnam and that service connection for diabetes mellitus should therefore be granted on a presumptive basis.

Duties to Notify and Assist

The Veterans Claims Assistance Act of 2000 (VCAA) describes VA's duty to notify and assist claimants in substantiating a claim for VA benefits. See 38 U.S.C.A. §§ 5100, 5102, 5103, 5103A, 5107, 5126 (West 2002 & Supp. 2009); 38 C.F.R. §§ 3.102, 3.156(a), 3.159, 3.326(a) (2008). Here, the Board is granting service connection. Thus, no further discussion of the VCAA is required.

Service Connection

At the outset, the Board notes that the claims file consists of voluminous evidence submitted by the Veteran, including deck logs, articles, service records, medical records, and statements from the Veteran and his medical providers. All of this evidence has been carefully reviewed and considered.

A Veteran who, during active military, naval, or air service, served in the Republic of Vietnam (Vietnam) during the Vietnam era shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. 38 C.F.R. § 3.307 (2009). “Service in the Republic of Vietnam” includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. See 38 C.F.R. §§ 3.307(a)(6)(iii) (2009).

The VA General Counsel has held the regulatory definition (which permits certain personnel not actually stationed within the borders of the Vietnam to be considered to have served in Vietnam) requires that an individual actually have been present within the boundaries of the Republic. See VAOPGCPREC 27-97. Specifically, the General Counsel has concluded that to establish qualifying “service in Vietnam” a Veteran must demonstrate actual duty or visitation in the Republic of Vietnam. Service on a deep water naval vessel in waters off the shore of the Republic of Vietnam, without proof of actual duty or visitation in Vietnam, does not constitute service in Vietnam for purposes of 38 U.S.C.A. § 101(29)(A) (establishing that the term “Vietnam era” means the period beginning on February 28, 1961 and ending on May 7, 1975 in the case of a Veteran who served in Vietnam during that period). See VAOPGCPREC 27-97; see also Haas v. Nicholson, 20 Vet. App. 257 (2006), rev'd sub nom. Haas v. Peake, 525 F.3d 1168 (Fed. Cir. 2008), cert. denied, 77 U.S.L.W. 3267 (Jan. 21, 2009) (No. 08-525).

If a Veteran was exposed to an herbicide agent during active military, naval, or air service, Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes) shall be service-connected, even though there is no record of such disease during service. 38 C.F.R. § 3.309(e). The diseases listed at 38 C.F.R. § 3.309(e), including Type II diabetes mellitus, shall have become manifest to a degree of 10 percent or more at any time after service. 38 C.F.R. §
3.307(a)(6)(ii). The record shows the Veteran has a current diagnosis of diabetes mellitus. Private medical records note a history of diabetes mellitus that was diagnosed in the 1980s. A VA examination in July 2005 diagnoses insulin-dependent diabetes mellitus type II which was poorly controlled.

The Veteran’s personnel records show that he was awarded the Vietnam Service Medal (VSM) and a National Defense Service Medal for service during the period of June 1962 to August 1966. The VSM was awarded to all members of the armed forces who served in Vietnam and contiguous waters and airspace between July 3, 1965 and March 28, 1973. The fact that the Veteran received this award does not establish that he actually was present within the boundaries of Vietnam.

It is undisputed that given the guidance in VAOPGCPREC 27-97, if the Veteran’s service had been limited to service on the U.S.S. Oklahoma City outside the territorial boundaries of the Republic of Vietnam, the presumptions contained in the regulations would be inapplicable to his case as he would not have met the criteria for service in the Republic of Vietnam. However, in the instant case, the Veteran’s service was conducted on a ship that frequently anchored in a harbor within the territorial borders of Vietnam. The evidence of record clearly shows that Da Nang Harbor is well sheltered and surrounded on three sides by the shoreline of Vietnam. The harbor is nearly totally surrounded by land and that the entire harbor is located within the territorial boundaries of Vietnam. As such, given the location of the harbor as being surrounded by the land on three sides and the evidence that the harbor is within the territory of Vietnam, and resolving all doubt in the Veteran’s favor, the Board finds that Da Nang Harbor is an inland waterway for the purposes of the regulation.

The Board finds that there is credible evidence that the Veteran set foot on land in Vietnam during the Vietnam Era, and he now has diabetes mellitus. Accordingly, presumptive service connection for diabetes mellitus based on herbicide exposure in Vietnam is granted.

ORDER

Service connection for diabetes mellitus type II is granted.

MARJORIE A. AUER
Veterans Law Judge, Board of Veterans' Appeals

Department of Veterans Affairs
MEMORANDUM FOR:

FROM: 349 MSS/DPMSCE
      531 Waldron Street
      Travis AFB CA 94535-2181

SUBJECT: Line of Duty Determination (LOD)

1. Your LOD has been approved. You will find a copy of your approved AF Form 348 enclosed. This form is your proof that this injury was indeed found to be in the line of duty. It is very important that you retain a copy of this form in your personal records for any possible future medical care you might request in regards to this specific injury.

2. As a result of your LOD injury/disease, you may be entitled to incapacitation pay. Your entitlement to incapacitation pay is based upon your fitness for military duty and/or loss of civilian income. Your servicing medical unit will make determination of fitness for military duty. You must request an AF Form 1971 from the 349th Medical Squadron.

3. If your request is approved, your initial 6 month entitlement will begin 6 Jun 2004. Your first request for payment will be based on the 15/30 days following your entitlement beginning date.

4. Documents required for your initial request are identified in the attached checklist. You will follow the procedures in Rule 1 or 2 depending on your fitness for military duty and/or loss of civilian income.

5. Your request for incapacitation pay cannot be processed until all the required documentation are received in Career Enhancement. Failure to provide current and sufficient information will result in discontinuation of pay and allowance.

6. Please contact myself at (707) 424-1663, if you have any questions.

/////SIGNED/////       
DURELL M. SIMMONS, SSgt, USAFR
Assistant Chief, Career Enhancement

Attachment:
AF Form 348

Cc:
ARPC
Unit Commander 52 APS
349 AMDS/SGA (w/o checklist)
### LINE OF DUTY DETERMINATION

<table>
<thead>
<tr>
<th>TO: Immediate Commander</th>
<th>THRU: 349 M5S</th>
<th>FROM: 349 Ams</th>
</tr>
</thead>
<tbody>
<tr>
<td>82 Aps</td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>1. NAME (Last, First, Middle Initial)</th>
<th>2. SSN</th>
<th>3. GRADE</th>
<th>4. ORGANIZATION</th>
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<tbody>
<tr>
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<td>S59</td>
<td>82 Aps</td>
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<thead>
<tr>
<th>5. MEMBER’S STATUS:</th>
<th>AD AF</th>
<th>AR C</th>
<th>AFROTC Cadet</th>
<th>USAF Cadet</th>
</tr>
</thead>
<tbody>
<tr>
<td>AD AF</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>6. NATURE AND EXTENT OF</th>
<th>DISEASE</th>
<th>INJURY</th>
<th>DEATH</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Slipped on concrete and hurt his back</td>
<td></td>
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</tr>
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</table>

<table>
<thead>
<tr>
<th>7. NAME AND LOCATION OF</th>
<th>MILITARY</th>
<th>CIVILIAN HOSPITAL OR TREATMENT FACILITY FIRST PROVIDED TREATMENT</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Lackland AFB TX</td>
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<table>
<thead>
<tr>
<th>8. TREATMENT PROVIDED:</th>
<th>HOUR</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9. MEDICAL OPINION OF MEMBER’S CONDITION WHEN FIRST TREATED:</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAS NOT UNDER THE INFLUENCE OF ALCOHOL. (See AFI 36-2910, Explanation of Terms)</td>
</tr>
<tr>
<td>WAS NOT UNDER THE INFLUENCE OF A DRUG INDUCING MARIJUANA. (See AFI 36-2910, Explanation of Terms)</td>
</tr>
<tr>
<td>WAS NOT MENTALLY RESPONSIBLE</td>
</tr>
<tr>
<td>UNABLE TO DETERMINE BECAUSE OF PHYSICAL CONDITION</td>
</tr>
<tr>
<td>SPECIFY ANY OTHER CONDITION SEEMED RELEVANT</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10. TESTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SANG ALCOHOL TEST</td>
</tr>
<tr>
<td>PSYCHIATRICAL EVALUATION</td>
</tr>
<tr>
<td>ANY OTHER TESTS AND RESULTS (Specify):</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>11. DETAILS OF ACCIDENT OR HISTORY OF DISEASE:</th>
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</thead>
<tbody>
<tr>
<td>While at Lackland AFB TX for aerial port tech school, unknown date September 2003 while entering the school building in the morning slipped and fell on the concrete. Back landed off and on twice than. Currently 5/10 sought treatment at Lackland, but nothing in the medical record.</td>
</tr>
</tbody>
</table>

### Recommendation: LOO yes

---

**Sources of Information**

<table>
<thead>
<tr>
<th>MEMBER</th>
<th>POLICE</th>
<th>WITNESSES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>OTHER (Specify):</td>
</tr>
</tbody>
</table>

**Typed Name and Grade of Medical Officer**

GILBERT L. WEGOWSKI, Eq, USAFR, IlC

**Signature**

349 AMOS GP

---

**Form 348, 20020220 (Rev-07)**

PREVIOUS EDITION IS OBSOLETE

---

Handling a VA Service Connected Disability Claim

4-92
Establishing Entitlement to Service-Connected Disability Compensation

SARA K. HILL
HILL & PONTON, P.A.
SKHILL@HILLANDPONTON.COM

Warning:
Please fasten your seatbelts

- It will be a bumpy ride

Caveat

- You will hear
  - Claim for “service-connection”
  - The vet needs to get “service-connection”
  - The vet needs to get “service-connected”

- Really
  - Claim for compensation for a service-connected disability
Claim for Service-Connected Disability Compensation

5 Common Elements to every claim
- *We are going to cover the first 3 only*
  - 1. Status as a veteran
  - 2. Existence of a disability
  - 3. Connection between service & the disability
  - 4. Degree of disability
  - 5. Effect date of disability

1. Status of a Veteran (overview)

... the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, compensation as provided in this subchapter [38 USCS 1110 et seq.], but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs. (38 U.S.C. § 1110)

- A) Quality of discharge
- B) Active service requirements
- C) Line of duty (LOD) determinations
- D) Willful misconduct
Status as a Veteran: Quality of Discharge

- The veteran must have a discharge that is ‘under conditions other than dishonorable.’
- Several types of discharge
  - Honorable discharge (HD)
  - Discharge under honorable conditions (UHC) or general discharge (GD)
  - Discharge under other than honorable conditions (OTH) or undesirable discharge (UD)
  - Bad conduct discharge (BCD)
  - Dishonorable discharge (DD)

What if multiple periods of service?

- Bad discharge from one period of service does not ban benefits for a disability from another period of service.
- Exception:
  - vet has been found guilty of treason, mutiny, spying, rebellion, subversive activities, or sabotage. 38 U.S.C. § 6104; 6105
Status as a Veteran: Active Service Requirements

- What is active duty?
  - Full time in Armed Forces
  - Travel to/from such duty
- Scope of “active, military, naval or air service”
  - Active duty
  - Active duty for training
  - Inactive duty for training

Status as a Veteran: Line of Duty Determinations

- If there is an injury or disease in service, the military will typically make an in line of duty determination
- If the service department finds that the injury or disease occurred in the line of duty, then that finding is binding on the VA
Status as a Veteran: Willful Misconduct

- An act involving conscious wrongdoing or known prohibited action
- Most common examples are alcohol and drug abuse
- A finding by a service department that an injury, disease or death was not due to willful misconduct will be binding on the VA

Status as a Veteran: LOD vs. Willful Misconduct

- Helpful to our veterans:
  - 38 USC 105(a) creates a presumption that an injury was in the line of duty and not willful misconduct
  - Finding of LOD binding on VA
  - Finding of not willful misconduct binding on VA
Chapter 4—Entitlement to Service Connected Disability Compensation

LOD Determination

2. Existence of a disability

- Must currently be suffering from a disability
- Pain is not a disability
- Exposure to a harmful substance (e.g. Agent Orange, asbestos)
  - Exposure alone is not a disability. Still need current disability as a result of that exposure
3. Connecting a Disability to Service

- Need a nexus → think bridge
- Link between service and the current disability
  - Not causation
  - Standard of proof: “at least as likely as not” (magic words)

Nexus: how do we get one?

- Medical Evidence: must have adequate Reasons & Basis
Nexus: how do we get one?

- Lay evidence – see Jandreau 492 F.3d 1372 (2007)
  - Layperson is competent to identify the medical condition;
  - Layperson is reporting a contemporaneous medical diagnosis; or
  - Lay testimony describing symptoms at the time supports a later diagnosis by a medical professional

- Hear no evil
- See no evil
- Speak no evil

3. Connecting a Disability to Service: Nexus

**WARNING:**
The longer the time between discharge and a claim, the more the VA will scrutinize whether there is an intervening cause to the veteran’s current disability.
3. Connecting a Disability to Service: Nexus

- 5 forms of Nexus:
  - 1. Direct
  - 2. Secondary
  - 3. Aggravation
  - 4. Medical negligence
  - 5. Legal Presumption

3. Connecting a Disability to Service: Direct SC

- Direct Service Connection:
  - Incident in service → NEXUS → current disability
  - Easy as pie, right?
### Chapter 4—Entitlement to Service Connected Disability Compensation

#### 3. Connecting a Disability to Service: Direct SC

<table>
<thead>
<tr>
<th>Knee pain in service</th>
<th>Current diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continues after service</td>
<td>- Fibromyalgia</td>
</tr>
<tr>
<td>12 years later files claim for ‘knee pain’</td>
<td>- Knee = trigger points</td>
</tr>
<tr>
<td>VA denies claim</td>
<td>Nexus</td>
</tr>
<tr>
<td>- Gap in treatment after service</td>
<td>- Doctor, through vet’s testimony, finds that the vet’s knee pain in service was related to Fibromyalgia</td>
</tr>
<tr>
<td>- No current diagnosis of knee condition</td>
<td></td>
</tr>
</tbody>
</table>

- **Watch out below!**
3. Connecting a Disability to Service: Secondary SC

- An already service-connected condition contributes to a new condition

- Easy example: vet is service-connected for Diabetes Mellitus II, and later develops peripheral neuropathy

3. Connecting a Disability to Service: SC via Aggravation

- Condition noted on entrance exam

- Condition pre-existed service

- Condition presumed aggravated by service (more on that later)
3. Connecting a Disability to Service: SC via Medical Negligence

- Wait, VA medical negligence is considered service-connected?
  - Yes, if vet wins section 1151 claim, his disability is treated as if it is service-connected.

- Disability/death under VA hospitalization/medical/surgical treatment

- Requires actual causation

3. Connecting a Disability to Service: SC via Legal Presumption

- No need for nexus!
- Yeah for presumptions!
Presumptive Service Connection

- Nexus is conceded
  - Typically do not need medical opinion
- Veteran must show:
  - In-service incident
  - Current disability
  - E.g.: in-service incident → SKIP NEXUS → current disability

- Presumptively service connected diseases:
  - Agent Orange related diseases
  - Diseases related to Persian Gulf Service (aka Gulf War Syndrome)
  - Others:
    - Chronic diseases
    - Radiogenic diseases
    - Tropical diseases

Presumptive Service Connection: Agent Orange Related Diseases

- “Boots on the ground” in Vietnam
  - Multiple exceptions

- Veteran must develop disease listed in 38 CFR 3.309(e)
Presumptive Service Connection: Persian Gulf War related illnesses

• Requirements
  o Vet served in Gulf during specific time
  o Must have “qualifying chronic disability of unknown origin”

• Catch
  o If the disease is diagnosed or attributed to something else, then no presumption

• Advice
  o Read the rule, fool
  o 38 CFR 3.317

Presumption of Soundness

• If a disability is not noted on a veteran’s entrance exam, then the vet is entitled to presumption of soundness

• Catch – if a disability is noted at entrance, then no presumption
**Presumption of Aggravation**

- A disability is noted on the veteran’s entrance and the disability increases in severity during service, the vet is entitled to presumption of aggravation.

**Soundness vs. Aggravation**

- **Presumption of Soundness**
  - Disability noted at entrance
  - Increased in severity in service
  - Presumption of Aggravation attaches

- **Presumption of Aggravation**
  - Disability not noted at entrance
  - Presumption of Soundness attaches
I dare you to rebut my presumption

- **VA’s burden to rebut a presumption**
  - Once the presumption attaches, the burden shifts and the standard of proof changes

- **Rebutting the Presumption of Soundness**
  - VA must show by clear and unmistakable evidence, *both* that the disease or disability existed prior to service, *and* that it was not aggravated by service

- **Rebutting the Presumption of Aggravation**
  - VA must show by clear and unmistakable evidence that increase in disability was due to the natural progression of the disease

We’re nearing the uphill finish line
PTSD – may be presumptively and directly SC

- PTSD – vet must show
  - Current diagnosis of PTSD
  - Credible supporting evidence of a stressor
  - Nexus medical opinion
    - May be both presumptively & directly service connected

- In-service incident that vet must show = stressor

PTSD based on Presumption of Service Connection

- 4 situations where the VA will not ask the vet for collaboration of a stressor. E.g. evidence of a stressor will be presumed if:
  - Vet was diagnosed with PTSD in service
  - Vet has combat related stressor
  - Vet was a POW
  - VA doctor finds vet’s PTSD relates to the “fear of hostile military or terrorist activity”
PTSD due to stressor of in-service personal assault

- Although this is not a presumption, the VA substantially reduced what evidence a veteran needs to collaborate an in-service personal assault:
  - Evidence outside of vet’s service records
  - Evidence of behavior changes
  - VA may submit this evidence to a medical professional for an opinion

PTSD based on Evidence of Direct Service Connection

- Veteran has the burden of producing proof of the stressor.
- Vet may do this via
  - service records
  - service medical records
  - buddy statements
  - newspaper articles
  - anything that works
Examples of VA erring in adjudicating service connection

Chronic disability

Service connection may be granted on a presumptive basis for osteoarthritis if this condition is manifested to a compensable degree (severe enough to be evaluated at least 10 percent disabling) within one year following military discharge.

As the medical evidence failed to show a diagnosis of osteoarthritis within one year following military discharge, service connection on a presumptive basis must be denied. In addition, as there was no evidence of osteoarthritis in service or evidence of a current diagnosis of osteoarthritis shown to be related to service, service connection for osteoarthritis, DJD, DDD, claimed as a low back and middle back condition remains denied.
The VA treats their regulations like songs lyrics

Chronic Disability


Service connection for multiple sclerosis (MS) is denied.

Service connection may be granted for a disability which began in military service or was caused by some event or experience in service.

Service connection may be granted on a presumptive basis under 38 CFR 3.309(a) for multiple sclerosis, if this condition is manifested to a compensable degree (severe enough to be evaluated at least 10 percent disabling) within seven years after military discharge (specified under 38 CFR 3.307). As the medical evidence fails to show a diagnosis of multiple sclerosis within the time period specified under 38 CFR 3.307, service connection on a presumptive basis must be denied.
Chapter 4—Entitlement to Service Connected Disability Compensation

Error applying Agent Orange regulations

- Vet applied for s/c for a type of leukemia not on the presumptive list
- The vet had multiple medical nexus statements connecting the leukemia to exposure to AO

In a recent Decision Assessment Document, the Court noted that presumptive service connection under 38 U.S.C. § 1116(b)(1) is warranted for a disease when a positive statistical association exists between Agent Orange exposure and the occurrence of a disease in humans. VA is not required to grant presumptive service connection for disabilities not on VA’s presumptive Agent Orange list on the basis of the opinions of individual doctors that there is a statistical correlation between Agent Orange exposure and such disabilities. The Court held that to allow the opinions of individual doctors to trump the collective view of experts on the issue of whether a statistical association with herbicide exposure exists with respect to a particular disease would be an impermissible expansion of available remedies beyond those explicitly provided by Congress.

Possible to have direct SC for Agent Orange

Even though a disease is not included on the list of presumptive diseases, a nexus *53 between the disease and service may nevertheless be established on the basis of direct service connection. See Stefl v. Nicholson, 21 Vet.App. 120, 123 (2007) (“The existence of presumptive service connection for a condition based on exposure to Agent Orange presupposes that it is possible for medical evidence to prove such a link before the National Academy of Sciences recognizes a positive association.”). Of particular relevance to an analysis of medical evidence supporting such a nexus are factors such as whether a medical professional finds studies persuasive, whether there are other risk factors that might be the cause of the condition for which benefits are sought, and whether the condition has manifested itself in an unusual manner. Id at 124.
Error re: Presumption of Soundness

- BVA decision on a hip disability

- Found that presumption of soundness attached & that there was clear and unmistakable evidence that the disability pre-existed service

- Regarding aggravation
  - VA did not order a VAE
  - Relied on in-service medical records

Error re: Presumption of Soundness

On the question of aggravation, the mere manifestation of symptoms such as pain with use, does not demonstrate that the underlying Legg-Perthe's disease underwent a permanent increase in severity in service, especially during this veteran's brief period of service where there was no evidence of any left hip trauma or injury in service. Notably in this veteran's case, not even the symptoms of left hip pain were
Error re: Presumption of Soundness

- Once the presumption attaches, the burden shifts and standard of proof changes

- Clear and unmistakable evidence for *both* a finding that the disability pre-existed service, and that it was not aggravated by service

Conclusion

- 5 elements to every claim:
  - 1. Status as a veteran
  - 2. Existence of a disability
  - 3. Connection between service & the disability
  - 4. Degree of disability
  - 5. Effect date of disability

- We got through the first 3. Hopefully it’s all down hill from here . . .
Chapter 5
Ratings and Effective Dates

MATTHEW D. HILL
Hill & Ponton PA
Daytona Beach, Florida

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RATINGS AND EFFECTIVE DATES
OUTLINE

Matthew D. Hill
Hill & Ponton

I. RATINGS

Briefly, a veteran may be entitled to service-connection disability if:

I. The disability was incurred or aggravated during active service in the line of duty.

II. The death resulted from a disability that was incurred or aggravated in the line of duty during active military service.

The VA uses a rating schedule as a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service.

The percentage ratings are designed to compensate the veteran for the loss of ability to earn wages due to exacerbations or illnesses from a service-connected disability or disabilities and their residual conditions.

The compensation amount is exactly the same for everyone, whether he or she is a physician or sanitation engineer.

The VA uses a rating schedule to determine what percentage of evaluation is assigned. The percentage value determines how much money the VA is obligated to pay.

38 C.F.R. § 4.1

Disability Ratings

Once service connection is established for a disability, VA determines the severity of that condition and assigns a rating. VA promulgated the Schedule for Rating Disabilities, which contains a listing of the criteria that must be met for the award of each permissible disability rating. 38 C.F.R. § 4. The rating schedule is the guide for quantifying the severity of a disability. 38 C.F.R. § 4.1.

The ratings are based on the severity of the symptoms of the condition. The symptoms considered vary depending on the condition. “The basis of disability evaluations is the ability of the body as a whole . . . to function as under the ordinary conditions of daily life including employment.” 38 C.F.R. § 4.10. The rating is meant to
reflect the average impairment in earning capacity due to the disability. 38 C.F.R. § 4.1

The rating serves as the basis for the award of the monthly monetary compensation payment. Ratings range from 0% to 100%, in 10% increments. 38 U.S.C. §§ 1114, 1155; 38 C.F.R. § 4.31.

The criteria for those ratings are based upon the VA’s experience and may be adjusted from time to time. The regulations laying out the criteria chosen and the disability rating assigned by VA are protected from judicial review. 38 U.S.C. §§ 1155, 7252(b).

**EXAMPLE: Diabetes mellitus**

A 0% rating is also known as “noncompensable” and a 100% rating is known as a “total rating.”

When there is a question of which of two ratings is to be applied, the higher will be applied if the disability picture more closely approximates the criteria for that rating; otherwise, the lower will be assigned. 38 C.F.R. § 4.7.

Ratings may be “staged” over periods of time where there is an increase or decrease in the severity of the disability. *Fenderson v. West*, 12 Vet.App. 119, 126-27 (1999); *Hart v. Mansfield*, 21 Vet.App. 505 (2007) (applying staged ratings to increased ratings claims).

Disability ratings are assigned for both service-connected and non-service-connected disabilities. The ratings for non-service-connected disabilities are used for pension purposes.

**Combined Disability Ratings**

If a veteran has multiple service-connected disabilities, VA will assign a rating for each condition separately.

It will then combine the ratings to determine the rating at which the disabilities will be paid.
Multiple Service-Connected Disabilities

When a veteran suffers from two or more service-connected disabilities, VA will combine the ratings for those disabilities to determine the combined overall disability rating. The table in 38 C.F.R. § 4.25(b) is used. Combined ratings are rounded to the nearest 10% increment, with 5’s rounding up. 38 C.F.R. § 4.25(b).

- E.g. 10% + 10% = 19%, which rounds up to 20%
- E.g. 40% + 20% = 52%, which rounds down to 50%

Combined ratings table

38 C.F.R. § 4.25 - Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent efficiency.

(a) To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 65 percent, but the 65 percent must be
converted to 70 percent to represent the final degree of disability. Similarly, with a
disability of 40 percent, and another disability of 20 percent, the combined value is
found to be 52 percent, but the 52 percent must be converted to the nearest degree
divisible by 10, which is 50 percent. If there are more than two disabilities, the
disabilities will also be arranged in the exact order of their severity and the combined
value for the first two will be found as previously described for two disabilities. The
combined value, exactly as found in table I, will be combined with the degree of the
third disability (in order of severity). The combined value for the three disabilities will
be found in the space where the column and row intersect, and if there are only three
disabilities will be converted to the nearest degree divisible by 10, adjusting final 5's
upward. Thus, if there are three disabilities ratable at 60 percent, 40 percent, and 20
percent, respectively, the combined value for the first two will be found opposite 60
and under 40 and is 76 percent. This 76 will be combined with 20 and the combined
value for the three is 81 percent. This combined value will be converted to the nearest
degree divisible by 10 which is 80 percent. The same procedure will be employed when
there are four or more disabilities. (See table I).

(b) Except as otherwise provided in this schedule, the disabilities arising from a
single disease entity, e.g., arthritis, multiple sclerosis, cerebrovascular accident, etc., are
to be rated separately as are all other disabling conditions, if any. All disabilities are
then to be combined as described in paragraph (a) of this section. The conversion to the
nearest degree divisible by 10 will be done only once per rating decision, will follow
the combining of all disabilities, and will be the last procedure in determining the
combined degree of disability.

**EXAMPLE:**

- Veteran has two disabilities
  - Diabetes Mellitus rated at 40%
  - Diabetic neuropathy rated at 20%
- 40% + 20% = 52%
**Bilateral factor:**

When a veteran suffers a disease or injury of both arms, both legs, or of paired skeletal muscles, special rating calculations apply. 38 C.F.R. § 4.26.

Paired extremities/skeletal muscles combined first

"30% (right leg)+30% (left arm)= 51%"

Add 10% of total → new rating

51 +10% =5.1

5.1 + 51% =56%

**Service Connection Based on Aggravation**

- If a condition is service connected because it was aggravated by another service-connected disability, VA will discount the overall rating for that condition by the degree of the disability before it was aggravated.
- Except when the veteran's overall disability rating is 100%

VA will award a disability rating for any condition that is connected to service by way of the presumption of aggravation or when any other disability is aggravated by a service-connected condition. After a veteran demonstrates that a disability from a preexisting injury or disease permanently increased in severity during active service, it is presumed to have been aggravated by service. However, VA will reduce from any award that degree of disability that existed prior to service or prior to the aggravation. But if the veteran is rated at 100% disabled, no reduction is taken. 38 C.F.R. §§ 3.310, 3.322(a), 4.22.

**EXAMPLE:**

Veteran has a high school basketball injury, noted during the entrance exam with symptoms sufficient for a 10% rating -

Injury worsened during basic training marching

VA awards 30% for the aggravation

VA will pay at the 20% rate

The 20% will combine with other ratings.

**Ratings Summary**
• Compare language in Rating Decision with CFR
• Each separate manifestation rated separately – but no pyramiding (38 C.F.R. § 4.14)
• Analogous: location of symptom, symptom of condition, function affected (38 C.F.R. § 4.20)
• Many terms vague – look for cases, BVA decisions
• Get details on impact on work
• Get an expert opinion

Ratings: Other Considerations

• Benefit of the doubt
  • If in equipoise
• Extra-schedular
• Total Disability due to Individual Unemployability 38 C.F.R. § 4.16
• 38 C.F.R. § 4.16(a): When a veteran has a combined rating of 70% or more, with one rating being at least 40%, or a single rating of 60% and the veteran cannot work due to the service connected disabilities
• 38 C.F.R. § 4.16(b): When a veteran does not meet the schedular requirements, TDIU may be awarded on an extraschedular basis when the veteran is unemployable. The VA regional office and the Board of Veterans’ Appeals are not authorized to make these awards; rather, when appropriate, they must refer such cases to the Director of Compensation and Pension Service or the Under Secretary for Benefits for extraschedular consideration.

• Secondary (including substance abuse)

II. EFFECTIVE DATES

Effective Dates

When awarding benefits, VA will assign a date from which the benefits are paid. This is called an effective date. Various factors influence what date is chosen by VA.

Generally

Effective dates are generally assigned based on the latter of the date the claim was received by VA or the date entitlement to the benefits arose.

{Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original

Handling a VA Service Connected Disability Claim 5–6
claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. 38 C.F.R. § 3.400}{

Be careful to distinguish between when entitlement arose and when entitlement was proven. It is especially important to understand the rules governing when a claim arises and remains pending, as VA frequently does not.

Exceptions

There are many exceptions to the general rule regarding the assignment of an effective date. Some common exceptions are:

1. If a claim is filed within one year of separation from service, then the effective date for benefits would be the latter of (1) the day after the date of separation or (2) the date entitlement arose. 38 C.F.R. § 3.400(b)(2)(i).

**EXAMPLE:**

Veteran is discharged honorably from the Army on July 1, 1999

Veteran files a claim for compensation for PTSD on January 1, 2000

VA grants entitlement on January 1, 2010

The effective date for the grant of compensation should be July 2, 1999, the day after the date of discharge

2. If a service-connected condition increases in severity during the one-year period prior to a claim for an increase, the effective date assigned will be the date that the disability is shown to have increased in severity. 38 C.F.R. § 3.400(o). Any increase in severity earlier than one year prior to a claim is not considered. The increase must be within the one-year period prior to the claim for an increase.

**EXAMPLE:**

Veteran has service-connected diabetes rated at 10% On July 1, 2010, he is prescribed hypoglycemic agents to control his condition

On January 1, 2011, he files a claim for an increase in the disability rating If granted, the effective date should be July 1, 2010

3. If VA denies a claim for disability compensation for a particular disability and
that claim becomes final and VA later obtains Department of Defense records that serve at least in part as the basis for a subsequent grant of benefits, the effective date may be the date the original claim was filed. 38 C.F.R. § 3.156(c); *Vigil v. Peake*, 22 Vet.App. 63 (2008); *Mayhue v. Shinseki*, 24 Vet.App. 273 (2011).

**EXAMPLE:**

Veteran files a claim for anxiety on May 1, 2000 based on a motor vehicle accident

VA denies the claim for lack of proof of an in-service incurrence of anxiety; no appeal.

In April 2010, the veteran submits a claim to reopen with service records establishing the in-service accident occurred.

If granted, VA should assign May 1, 2000 as the effective date

**Herbicide-Related Presumptive Conditions (“Nehmer”)**

There are special rules governing the effective dates for compensation claims for conditions presumptively related to a veteran’s exposure to herbicides. 38 C.F.R. § 3.816.

In certain circumstances, these rules permit the award of an effective date as early as a date of an original claim based on VA later finding that certain claimed conditions are presumptively related to herbicide exposure, notwithstanding when VA makes that determination or how much time passes between the original claim and the ultimate award.

“Nehmer” cases

- Have their own special set of rules governing effective dates assigned by VA
- VA may be required to assign an effective date many years prior to the date of the current claim in some circumstances

**Effective Dates: Things You Should Know:**

- Disability Ratings and Effective Dates generally control how much compensation a veteran will receive
- TDIU is an alternative way to receive disability compensation at the 100% rate
- Additional compensation may be awarded in certain circumstances

- Effective Dates are assigned based on the date of the claim or date entitlement arose, whichever is later
- Effective Dates can go back as early as the date of the first claim in some circumstances
Briefly, a veteran may be entitled to service-connection disability if:

1. The disability was incurred or aggravated during active service in the line of duty.

2. The death resulted from a disability that was incurred or aggravated in the line of duty during active military service.

The VA uses a rating schedule to determine what percentage of evaluation is assigned. The percentage value determines how much money the VA is obligated to pay.

(38 C.F.R. § 4.1)
Rating Codes for Individual Disabilities

Used for evaluating the degree of disabilities in claims for disability compensation, disability and death pension, and in eligibility determinations.

(Authority: 38 U.S.C. 1155)
Disability Ratings

1. THE MUSCULOSKELETAL SYSTEM
2. THE ORGANS OF SPECIAL SENSE
3. IMPAIRMENT OF AUDITORY ACUITY
4. INFECTIONS DISEASES, IMMUNE DISORDERS AND NUTRITIONAL DEICIENCIES
5. THE RESPIRATORY SYSTEM
6. THE CARDIOVASCULAR SYSTEM
7. THE DIGESTIVE SYSTEM
8. THE GENITOURINARY SYSTEM
9. GYNECOLOGICAL CONDITIONS AND DISORDERS OF THE BREAST
10. THE HEMIC AND LYMPHATIC SYSTEMS
11. THE SKIN
12. THE ENDOCRINE SYSTEM
13. NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS
14. MENTAL DISORDERS
15. DENTAL AND ORAL CONDITIONS

Disability ratings are assigned by VA for each service-connected disability based on the criteria in the Schedule for Rating Disabilities (38 C.F.R. Part 4) http://alturl.com/xokdv

• The monthly compensation paid to a veteran is based on the rating assigned, which is determined by VA based on average earning impairment due to those symptoms.
Disability Ratings

- Range from 0% to 100% in 10% increments
- Control the compensation paid to a veteran
- A rating of 30% or more results in additional compensation to veterans for dependents

http://1.usa.gov/UBliUW

Disability Ratings

<table>
<thead>
<tr>
<th>Disease</th>
<th>Rating</th>
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<tbody>
<tr>
<td><strong>Diabetes Mellitus:</strong></td>
<td></td>
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<tr>
<td>Requiring insulin, restricted diet, and regulation of activities</td>
<td>40</td>
</tr>
<tr>
<td>Requiring insulin and restricted diet or oral hypoglycemic agent and restricted diet</td>
<td>20</td>
</tr>
<tr>
<td>Manageable by restricted diet only</td>
<td>10</td>
</tr>
</tbody>
</table>
Chapter 5—Ratings and Effective Dates

Disability Ratings

- **0%**
  - Non compensable

- **100%**
  - Total rating

- **0% + 0%**
  - Multiple non compensable (clearly to interfere with normal employability, apply 10%)

Combining Ratings
Combined Disability Ratings

- If a veteran has multiple service-connected disabilities, VA will assign a rating for each condition separately.
- It will then combine the ratings to determine the rating at which the disabilities will be paid.

Multiple disability ratings are combined, not added:

10% + 10% = 19%, which rounds up to 20%
40% + 20% = 52%, which rounds down to 50%
### Combined Disability Ratings

The full table for combining the disabilities is at 38 C.F.R. § 4.25(b)

<table>
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<td>62</td>
<td>70</td>
<td>77</td>
<td>85</td>
<td>92</td>
</tr>
</tbody>
</table>

#### Example:
- **Veteran has two disabilities**
  - Diabetes Mellitus rated at 40%
  - Diabetic neuropathy rated at 20%
- **40% and 20% = 52%**
When a veteran suffers a disease or injury of both arms, both legs, or of paired skeletal muscles, special rating calculations apply.

(38 C.F.R. § 4.26)
**Bilateral Factor**

Paired extremities/skeletal muscles combined first

\[ 30\% \text{ (right leg)} + 30\% \text{ (left arm)} = 51\% \]

Add 10% of total → new rating

\[
\begin{align*}
51 + 10\% & = 5.1 \\
\downarrow & \\
5.1 + 51\% & = 56\%
\end{align*}
\]

**Ratings Based on Aggravation**

- If a condition is service connected because it was aggravated by another service-connected disability, VA will discount the overall rating for that condition by the degree of the disability before it was aggravated.
Ratings Based on Aggravation

Example:
Veteran has a high school basketball injury, noted during the entrance exam with symptoms sufficient for a 10% rating -

Total Disability due to Individual Unemployability

- Another way to get to a 100% rating
- When ratings combine to a certain rating then a veteran becomes eligible for a 100% rating if his disabilities prevent the veteran from working
- Combined ratings=70% or
- Single rating= 60%
- 38 C.F.R. 4.16
Ratings Based on Aggravation

Injury worsened during basic training marching,

• VA awards 30% for the aggravation

• VA will pay at the 20%

- The 20% will combine with other ratings.

Ratings: Summary

• Compare language in Rating Decision with CFR

• Each separate manifestation rated separately - but no pyramiding (38 C.F.R. § 4.14)

• Analogous: location of symptom, symptom of condition, function affected (38 C.F.R. § 4.20)
Ratings: Summary

- Many terms vague - look for cases, BVA decisions
- Get details on impact on work
- Get an expert opinion

Ratings: Other Considerations

- Benefit of the doubt
  - If in equipoise
- Extra-schedular
- Secondary (including substance abuse)
Effective Dates

Establishes from what date benefits will be paid

Determined for each service connected disability

Generally based on the latter date of when:

- VA receives the claim or

- Entitlement to benefits arose
Effective Dates: Exceptions

When the claim is filed within one year following separation from service, the effective date is the day after the date of discharge for that claim.

Example:

- Veteran is discharged honorably from the Army on July 1, 1999
- Veteran files a claim for compensation for PTSD on January 1, 2000
- VA grants entitlement on January 1, 2010
- The effective date for the grant of compensation should be July 2, 1999, the day after the date of discharge
Effective Dates: Exceptions

If a disability increases in severity within one year prior to claiming an increased rating, the effective date is the date the increase occurred.

Example:

- Veteran has service-connected diabetes rated at 10%
- On July 1, 2010, he is prescribed hypoglycemic agents to control his condition
- On January 1, 2011, he files a claim for an increase in the disability rating
- If granted, the effective date should be July 1, 2010
Effective Dates: Exceptions

If VA denies a claim and later reopens the claim and grants it based at least in part on service department records not previously received by VA, the effective date will be the date the previous claim for compensation for that condition was filed.

Example:

- Veteran files a claim for anxiety in May 1, 2000 based on a motor vehicle accident.
- VA denies the claim for lack of proof of an in-service incurrence of anxiety; no appeal.
- In April 2010, the veteran submits a claim to reopen with service records establishing the in-service accident occurred.
- If granted, VA should assign May 1, 2000 as the effective date.
Chapter 5—Ratings and Effective Dates

Effective Dates: Exceptions

Claims related to herbicide exposure:

- "Nehmer" cases

- Have their own special set of rules governing effective dates assigned by VA

- VA may be required to assign an effective date many years prior to the date of the current claim in some circumstances

Effective Dates: Things You Should Know

- Disability Ratings and Effective Dates generally control how much compensation a veteran will receive

- TDIU is an alternative way to receive disability compensation at the 100% rate

- Additional compensation may be awarded in certain circumstances
Effective Dates: Things You Should Know

• Effective Dates are assigned based on the date of the claim or date entitlement arose, whichever is later.

• Effective Dates can go back as early as the date of the first claim in some circumstances.
Chapter 6

Increased Ratings for Service Connected Claims and Dependents Benefits

MATTHEW D. HILL
Hill & Ponton PA
Daytona Beach, Florida

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I. INCREASED RATING CLAIMS

- When a veteran believes that his or her service-connected (s/c) condition has become more disabling, an increased-rating (IR) claim should be submitted.

- Requirement – veteran’s good faith belief that the condition has become more severe or more disabling.

Informal Claims

A veteran does not have to complete a formal VA application form to file a claim for a rating increase. Once the veteran has completed a formal application that has resulted in an award of service connection for a disability, the VA does not require the veteran to file another formal application when he or she seeks an increased rating. Instead, a veteran may initiate a claim for an increased rating by filing an informal claim. An informal claim can be filed by the veteran’s simply writing a letter to the VA stating that his or her condition has worsened and that he or she is seeking an increased rating. VA regulations state that an informal “request for [an] increase . . . will be accepted as a claim.” For example, if a veteran writes a letter to the VA stating that he wants to have his disability rating for arthritis increased, the VA must treat this letter as a claim for an increased rating.

4138 – should include:

- Condition has worsened
- Date condition worsened
- Seeking increased rating

The VA also recognizes that other documents may constitute informal claims for increased ratings. These include:

...
• VA or uniform services medical examination or hospitalization report concerning treatment of a s/c disability

• Non-VA hospital report (where veteran was hospitalized at VA expense) for a s/c disability

• Evidence from a private physician or lay person showing a reasonable probability of entitlement to an increased rating

• Examination reports and clinical records from state, county, municipal, and other government entities or recognized private institutions

**Effective Date for IR**

The date that governs when the change in benefit should be paid is known as the **effective date** of the claim. The effective date of an informal claim based on the records specified will be the date of admission or examination, or one year prior to date of claim if increase occurred within this time frame.

**Evidence to Support IR**

• Physician’s, Hospital, Rehabilitation and Psychiatric records from reliable treating providers

• Statements of the veteran

• Statement from the veteran’s treating physician

• Statement from a private doctor retained to provide a medical statement, showing the current severity of the service-connected condition (Independent Medical Evaluation - IME)

**EXAMPLE: IR for cervical spine**

Vet is s/c for cervical spine strain with 0% rating from 10/18/06

Submits a claim for IR on 7/24/09 (VAF 21-4138)

Vet submits treatment records from VA Medical Center dated 1/08 to 9/09, showing treatment for neck pain in 6/09 but no ROM
Increase to 30% is granted based on 9/09 VA examination showing forward flexion of spine of 15 degrees or less

Effective date of increase 7/24/09

(See Exhibit 1 – VAF 4138)

II. SECONDARY SERVICE CONNECTION

Claims secondary to already established s/c disabilities:

First, veteran has to have a s/c condition;

Later, develops a condition as a result of the s/c condition;

Second condition will qualify as secondary s/c

Elements for secondary s/c

- Existing s/c condition
- Current, second condition
- A medical condition that was caused or aggravated by the s/c condition

It is authorized by 38 C.F.R. § 3.310 (2012), which states: “Except as provided in Section 3.300(c), disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered part of the original condition.”

There are two ways to establish secondary service connection. One way is where a service-connected condition contributes to the creation of a new disability, or proximate cause; second way is where a service-connected disability aggravates (worsens) a non-service-connected condition.

Aggravation - 38 C.F.R. § 3.310(b)(2010)

VA will award a disability rating for any condition that is connected to service by way of the presumption of aggravation or when any other disability is aggravated by a service-connected condition. However, VA will reduce from any award that degree of disability that existed prior to service or prior to
the aggravation. But if the veteran is rated at 100% disabled, no reduction is taken. 38 C.F.R. §§ 3.310, 3.322(a), 4.22.

There has to be supportive medical evidence establishing the secondary disability as an aggravated condition due to the original service-connected condition. The date a secondary disability manifests itself does not matter. However, a delay in the manifestation of the secondary condition may impact the effective date that is assigned to the secondary condition for compensation.

**Proximate Cause - McQueen vs. West, 13 Vet App. 237, 241 (1999)**

The secondary condition will be compensated if there is sufficient medical evidence to show that it is as likely as not that the service-connected condition caused or aggravated the claimed disability. Obtain a medical expert opinion.

**EXAMPLE - diabetes mellitus**

**Aggravation:**

- DM II s/c 20% 2007
- MI in 1997 → CAD dx in 2002
- Vet filed claim for aggravated heart condition secondary to s/c DM II in 7/08
- VA found that vet’s heart condition was permanently worsened as a result of his s/c DM II
- Granted 90% s/c for CAD associated with DM II with effective date of 7/08

**Proximate cause:**

- DM II s/c 20% 2007
- On same 4138, vet claimed his peripheral neuropathy was caused by s/c DM II
- VA found his bilateral peripheral neuropathy was caused by his s/c DM II
• Granted 40% s/c for each right and left peripheral neuropathy with effective date of 7/08

• Combined rating 100%

(See Exhibit 2)

III. SURVIVORS BENEFITS AND DEPENDENTS CLAIMS

Everyone who represents veterans before the VA or the Court will eventually confront the following situations:

• You represent an elderly veteran in failing health who dies while you are representing him or her. The question is what do you do?
• You get a call from the widow who says my husband died he was receiving a 100% rating, why am I getting nothing?

The laws and rules in this area are neither straightforward nor clear. My goal is to provide an overview of the following:

1. Who is a survivor: that is who is eligible for benefits after the veteran dies?

2. What are the different types of benefits one can receive?

3. What about substitution?

A variety of VA benefits may be available to a deceased veteran’s surviving family members or to the survivors of a deceased VA claimant. For example, where a veteran was receiving VA disability compensation or pension, the surviving spouse of that veteran may be entitled to VA benefits that the veteran would have received the month the veteran died. A survivor of a veteran whose death is service connected is eligible to receive an amount set by statute to cover or defray the cost of burial and funeral expenses. Other VA benefits, such as education benefits, VA home loans, and VA health care, may also be available to certain survivors.

Survivor/qualifying relationships:
• Claim dies unless there is a qualifying survivor
• Spouse
• Child
• Dependent Parent

I think the first rule is the general rule and that is when the veteran dies the claim dies with him or her, that is unless there is a survivor

1. **Advocacy tip #1** When you open a case make sure you know the following: is the veteran married? Does he have children? Be sure to know the names and date of birth of all children.

**Spouse:**

A surviving spouse is defined by statute 38 U.S.C. § 101 (3) as:

a person who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran’s death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person, they must have been married for one year or have a child. 38 C.F.R. § 3.205.

**Caveat:** if the surviving spouse remarries after the death of the veteran there are special rules that apply depending on (1) year in which remarriage occurs and (2) age of the surviving spouse when remarriage occurs.

**Child:**

The Second Survivor is a child defined by statute 38 U.S.C. § 101 (4) and has both age limitations and relationship limitations.

**Age Limitation of a Child:**
• (i) Who is under the age of 18

• (ii) Who, before attaining the age of 18 became permanently incapable of self-support, or;

• (iii) Who, after attaining the age of 18 and until completion of education or training (but not after attaining the age of 23), is pursuing a course of instruction at an approved educational institution

Relationship to veteran:

a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death (There is more to this definition so if you are dealing with illegitimate children revisit this statute)

Dependent Parent:

The Third and Last Survivor is the Dependent Parent defined at 38 U.S.C. § 102

Dependency of a parent, which may arise before or after the death of a veteran, shall be determined in accordance with regulations prescribed by the Secretary. (See 38 C.F.R. § 3.251)

WHAT ARE THE DIFFERENT BENEFITS ONE CAN RECEIVE?

Accrued Benefits

“periodic monetary benefits (other than insurance and servicemen's indemnity) under laws administered by the Secretary to which an individual was entitled at death under existing ratings or decisions or those based on evidence in the file at date of death and due and unpaid, shall, upon the death of such individual be paid . . . .” 38 U.S.C. § 5121

The application for accrued benefits must be filed within one year of death of the veteran

2. Advocacy Tip #2: the VA form 21-534 is a claim for DIC benefits as well as accrued benefits.
A survivor may be entitled to “accrued benefits” when a VA claimant dies while his or her claim for benefits is pending. Speaking practically, the best route for survivors of deceased VA claimants to obtain accrued benefits at the current time is not by filing a claim for accrued benefits at a VA regional office. Survivors of veterans who died on or after October 10, 2008 are eligible to step into the shoes of the deceased VA claimant via a “substitution” process, eliminating the need to apply for accrued benefits. Filing for substitution is more beneficial to a survivor of a deceased VA claimant than filing a claim for accrued benefits because the procedural rules are more favorable. Therefore, there is no conceivable reason for a survivor of a veteran who died on or after October 10, 2008 to file a Section 5121 claim for accrued benefits. Substitution is discussed in the upcoming slides.

**Dependent’s Educational Assistance**

Surviving spouse of a deceased veteran:

1. The veteran died of a service-connected disability; or
2. The veteran died while suffering from a disability evaluated by the VA as total and permanent in nature and resulting from a service-connected disability.

Children are entitled to DEA benefits:

1. When the veteran parent died of a service-connected disability; or
2. When the veteran parent died while suffering from a disability evaluated by the VA as total and permanent in nature and resulting from a service-connected disability

**Dependency and Indemnity Compensation Claims (DIC)**

A dependency and indemnity compensation claim is a separate benefit from accrued benefits for post-death or continuing compensation for the survivors of a service-connected veteran.

Dependency and indemnity compensation claims are available to the same specifically identified survivors: the surviving spouse, dependent children and dependent parents.
Whereas in accrued benefits claims the qualifying survivors are dealing with pre-death period monetary benefits due the veterans, dependency and indemnity compensation is payable after death to qualifying survivors independently, except in the case of minor dependent children who reside with the surviving spouse.

- New claim
- A veteran's death is considered to be due to a S/C disability when that disability was either a principal or contributory cause. 38 C.F.R. § 3.312(a)

**WHAT ABOUT SUBSTITUTION?**

If a VA claimant died before October 10, 2008, without having established that he or she is entitled to VA benefits, the claim “died” as well.

In almost all cases, a survivor of a deceased claimant who died before October 10, 2008 will not be able to continue the claim by stepping into the shoes of the claimant. The only way such a survivor can recover the claimed VA benefits is to file a claim for “accrued benefits.”

An individual may be entitled to accrued benefits through substitution provided the following requirements are met:

1. If a claimant dies, after October 10, 2008 while a claim for any benefit is pending, a living person who would be eligible to receive accrued benefits due to the claimant under section 5121(a) of this title [38 uses§ 5121(a)] may, not later than one year after the date of the death of such claimant, file a request to be substituted as the claimant for the purposes of processing the claim to completion.

2. Any person seeking to be substituted for the claimant shall present evidence of the right to claim such status within such time as prescribed by the Secretary in regulations.
3. Substitution under this subsection shall be in accordance with such regulations as the Secretary may prescribe

This provision presents new challenges for the representatives of qualifying survivors, as well as the VA and the Board.

As a result of the enactment of § 5121A a qualifying survivor is well served by filing a motion to substitute as the claimant in a pending claim or appeal before the VA or the Board.

Matters of which a substituting claimant needs to be aware when substituting

If you substitute, what, if anything, do you say in your VA Form 21-534?

Recommendation: Tell the VA that you have filed to substitute under § 5121A.

But, be sure to file the VA Form 21-534, if the qualifying survivor has a claim for dependency and indemnity compensation.

WHAT KIND OF CLAIMS DO MOST PRACTITIONERS HANDLE?

DIC and Accrued Benefits

The VA will pay monthly compensation – known as Dependency and Indemnity Compensation, or “DIC” – to the surviving spouse, or dependent children, of a veteran entitled to service-connected compensation under the following circumstances:

1. The veteran’s primary or contributing cause of death was a condition that was service-connected, or at a minimum, met all three criteria for entitlement to service-connected compensation; or
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Accrued Benefits
If the veteran had a claim pending at death the claim dies with the veteran but the surviving spouse or dependent child may be entitled to those accrued benefits that were not finally adjudicated.
Scope of Presentation

- Claims for Increase
- Secondary Claims
- Dependent’s Claims

Increase Ratings for service-connected claims

- When a veteran believes that his or her service-connected (s/c) condition has become more disabling, an increased-rating (IR) claim should be submitted.

- Requirement – veteran’s good faith belief that the condition has become more severe or more disabling.
Chapter 6—Increased Ratings for Service Connected Claims and Dependents Benefits

What is the goal?

0% = $0
50% = $810
100% = $2,816

Informal Claim for IR

Simple letter or VA Form 21-4138

- Condition has worsened
- Date condition worsened
- Seeking increase rating
Documents VA accepts as informal claims

• VA or uniform services medical examination or hospitalization report concerning treatment of a s/c disability

• Non-VA hospital report (where veteran was hospitalized at VA expense) for a s/c disability

• Evidence from a private physician or lay person showing a reasonable probability of entitlement to an increased rating

• Examination reports and clinical records from state, county, municipal, and other government entities or recognized private institutions

The date that governs when the change in benefit should be paid is known as the effective date of the claim.

The effective date of an informal claim is usually date of the claim is submitted.
Evidence to support IR

- Physician’s, Hospital, Rehabilitation and Psychiatric records from reliable treating providers
- Statements of the veteran
- Statement from the veteran’s treating physician
- Statement from a private doctor retained to provide a medical statement, showing the current severity of the service-connected condition (Independent Medical Evaluation - IME)

IR for Cervical Spine Strain

- Vet is s/c for cervical spine strain with 0% rating from 10/18/06
- Submits a claim for IR on 7/24/09 (VAF 21-4138)
- Vet submits treatment records from VA Medical Center dated 1/08 to 9/09, showing tx for neck pain in 6/09 but no ROM
- Increase to 30% is granted based on 9/09 VA examination showing forward flexion of spine of 15 degrees or less
- Effective date of Increase 7/24/09 (See Exhibit 1 – VAF 4138)
Secondary Service Connection

Vet has a s/c condition
Later develops a condition as a result of the s/c condition
Second condition will qualify as a secondary s/c

Claims secondary to already established service compensation claims
Elements for secondary s/c

Existing s/c condition

Current, second condition

A medical condition that was caused or aggravated by the s/c condition

Two ways

Secondary

Aggravation

S/C condition aggravates a non S/C condition
Compensate non S/C condition to degree aggravated

38 C.F.R. § 3.310(b)(2010)

Proximate Cause

S/C condition contributes to a new disability

McQueen vs. West, 13 Vet App. 237, 241 (1999)
This type of claim is critical in Diabetes Type II claims because of all the secondary problems caused by diabetes.

<table>
<thead>
<tr>
<th>Aggravation</th>
<th>Proximate Cause</th>
</tr>
</thead>
<tbody>
<tr>
<td>• DM II s/c 20% 2007</td>
<td>• DM II s/c 20% 2007</td>
</tr>
<tr>
<td>• MI in 1997 ⇒ CAD dx in 2002</td>
<td>• On same 4138, vet claimed his peripheral neuropathy was caused by s/c DM II</td>
</tr>
<tr>
<td>• Vet filed claim for aggravated heart condition secondary to s/c DM II in 7/08</td>
<td>• VA found his bilateral peripheral neuropathy was caused by his s/c DM II</td>
</tr>
<tr>
<td>• VA found that vet’s heart condition was permanently worsened as a result of his s/c DM II</td>
<td>• Granted 40% s/c for each right and left peripheral neuropathy with effective date of 7/08</td>
</tr>
<tr>
<td>• Granted 90% s/c for CAD associated with DM II with effective date of 7/08</td>
<td>• (See Exhibit 2)</td>
</tr>
</tbody>
</table>

Survivor’s Benefits and Dependent’s Claims

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Everyone who represents veterans before the VA or the Court will eventually confront the following situations:

You represent an elderly veteran in failing health who dies while you are representing him or her. The question is what do you do?

You get a call from the widow who says my husband died he was receiving a 100% rating, why am I getting nothing?

The laws and rules in this area are neither straightforward or clear. My goal is to provide an overview of the following:

1. Who is a survivor; that is who is eligible for benefits after the veteran dies?

2. What are the different type of benefits one can receive?

3. What about substitution?
Who is a survivor/ qualifying relationships

Claim dies unless there is a survivor

Spouse

Child

Dependent parent

1. Advocacy tip #1 When you open a case make sure you know the following: Is the veteran married; does he have children; be sure to know the names and date of birth of all children.
Who is a survivor/ qualifying relationships

A surviving spouse is defined by statute 38 U.S.C. § 101 (3) as:

A person of the opposite sex who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.

Caveat if the surviving spouse remarries after the death of the veteran there are special rules that apply depending on (1) year in which remarriage occurs and (2) age of the surviving spouse when remarriage occurs.
Who is a survivor/ qualifying relationships

The Second Survivor is a child defined by statute 38 U.S.C. § 101 (4) has both age limitations and relationship limitations.

Who is a survivor/ qualifying relationships

Age limitations of a child:

• (I) Who is under the age of 18

• (II) Who, before attaining the age of 18 became permanently incapable of self-support, or;

• (III) Who, after attaining the age of 18 and until completion of education or training (but not after attaining the age of 23), is pursuing a course of instruction at an approved educational institution.

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Who is a survivor/ qualifying relationships

The relationship of a child to the veteran is defined as:

- a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death

(There is more to this definition so if you are dealing with illegitimate children revisit this statute)

The Third and Last Survivor is the Dependent Parent defined at 38 U.S.C. § 102

Dependency of a parent, which may arise before or after the death of a veteran, shall be determined in accordance with regulations prescribed by the Secretary.

(See 38 C.F.R. § 3.251)
What are the different benefits one can receive?

Accrued Benefit

“periodic monetary benefits (other than insurance and servicemen's indemnity) under laws administered by the Secretary to which an individual was entitled at death under existing ratings or decisions or those based on evidence in the file at date of death and due and unpaid, shall, upon the death of such individual be paid ....”

38 U.S.C. § 5121

What are the different benefits one can receive?

Accrued Benefit

The application for accrued benefits must be filed within one year of death of the veteran.

Advocacy Tip #2: the VA form 21-534 is a claim for DIC benefits as well as accrued benefits.

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What are the different benefits one can receive?

Dependent’s Educational Assistance

Surviving spouse of a deceased veteran:

(1) The veteran died of a service-connected disability; or

(2) The veteran died while suffering from a disability evaluated by the VA as total and permanent in nature and resulting from a service-connected disability.

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What are the different benefits one can receive?

Dependent’s Educational Assistance

Children are entitled to DEA benefits:

(1) When the veteran parent died of a service-connected disability; or

(2) When the veteran parent died while suffering from a disability evaluated by the VA as total and permanent in nature and resulting from a service-connected disability.
What are the different benefits one can receive?

Dependency and Indemnity Compensation Claims (DIC)

- A DIC claim is separate benefit from accrued benefits for post death or continuing compensation for the survivors of a service connected veteran.

- DIC is payable to after death to qualifying survivors independently, except in the case of minor dependent children who reside with the surviving spouse.

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What are the different benefits one can receive?

DIC

- Original claim by the survivor, regardless of the status of adjudications concerning S/C disability claims brought by the veteran before his or her death. (Green v. Brown, 10 Vet. App. 111, 114 (1997); see also Wingo v. West, 11 Vet. App. 307, 309 (1998))

- New claim

- A veteran's death is considered to be due to a S/C disability when that disability was either a principal or contributory cause. (38 C.F.R. § 3.312(a))

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Survivors' Claims

- Dependency & Indemnity Compensation (DIC)/Accrued Benefits (21-534)
- If filed within year of death, effective date is date of death, otherwise, date claim received

What about substitution?

Substitution of Qualifying Survivor

Effective October 10, 2008, the provisions of 38 U.S.C. § 5121A became the law.

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What about substitution?

Substitution

1. If a claimant dies while a claim for any benefit is pending, a living person who would be eligible to receive accrued benefits due to the claimant under section 5121(a) of this title [38 uses § 5121(a)] may, not later than one year after the date of the death of such claimant, file a request to be substituted as the claimant for the purposes of processing the claim to completion.

2. Any person seeking to be substituted for the claimant shall present evidence of the right to claim such status within such time as prescribed by the Secretary in regulations.

3. Substitution under this subsection shall be in accordance with such regulations as the Secretary may prescribe.

What about substitution?

Substitution

This provision presents new challenges for the representatives of qualifying survivors, as well as the VA and the Board.

As a result of the enactment of § 5121A a qualifying survivor is well served by filing a motion to substitute as the claimant in a pending claim or appeal before the VA or the Board.
What about substitution?

Matters which a substituting claimant needs to be aware when substituting.

• If you substitute, what, if anything, do you say in your VA Form 21-534? Recommendation: Tell the VA that you have filed to substitute under § 5121A.

• But, be sure to file the VA Form 21-534, if the qualifying survivor has a claim for dependency and indemnity compensation.

What kind of claims do most practitioners handle?

DIC and Accrued Benefits

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What kind of claims do most practitioners handle?

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